

that governs in this situation, that is, the situation dealt with in the opinion of October 8, 1935. A. Yes. I would like to state it in the words of the Swiss Supreme Court, as stated in the following case, where the problem of non-application of the German foreign currency regulation came up:

"Although it is difficult to describe in a general 1670 and different way the essence of public order, it is possible to show the function of this doctrine. The doctrine of public order shall hinder the application of foreign law and guarantee the application of the national law in cases where the country would violate definitely the national legal standards. That is the basis of the whole practice of the Swiss Supreme Court, whatever may be the definition of public order in individual cases."

Q. But I want to know what the public order is in this individual case. A. The public policy in this individual case is not to apply the Germany foreign currency regulation.

Q. But you are giving me the conclusion, Professor. What I want to know is the policy leading to that conclusion. A. The policy leading to that conclusion, as stated to Your Honor beforehand, it was the general feeling in Switzerland that the German foreign currency regulations interfere with Swiss creditors in an arbitrary way; and, for this reason, this kind of law should be disregarded by the Swiss courts.

Q. Thank you. Now, in the opinion of October 8, 1935, who were the parties to the agreement that was given effect? A. The plaintiff is a Swiss corporation, and the debtor—

Q. Where does the Swiss corporation reside? Do 1671 you know? A. In Zurich.

Q. And who was the debtor? A. The debtor is Rheinische Handelsgesellschaft.

Q. That is a German corporation? A. That must be a German corporation, yes.

Q. And where did the transaction take place? A. The assignment?

Q. Yes, please. A. The facts as stated in this case, as I showed you, do not show if the transaction has been made inside or outside, because the court had not investigated it, because it said in all events the Swiss courts have to disregard the foreign currency regulations.

Q. I am just trying to find out what the facts are, and the facts you do not know from reading the opinion? A. From reading the opinion, you do not know.

Q. Thank you. And the policy of the court is not to interfere with the rights of Swiss creditors. In other words, not to permit German creditors to say they cannot pay—

I am sorry; I misspoke myself.

The policy is not to permit German debtors to say to their Swiss creditors, "We can't pay you, because we are blocked from paying you by the German foreign exchange law." Isn't that right? A. I would state it so.

1872 Q. Well, do you agree with me? A. Yes.

Q. Fine. And that policy has nothing to do, does it, with a transaction in which both parties are Germans, and where there is no Swiss creditor in any way involved? A. That is right; there is a difference.

Q. The public policy you have just stated has no possible bearing on a situation where there isn't any Swiss creditor in any way involved? Isn't that true? A. No, that is not true, because the Swiss Supreme Court said Swiss courts have to disregard the German foreign currency regulations.

Q. I am talking about policy. A. And for all events, and for this reason the policy has to be strict.

Q. Where do you find that here?—that the policy has to be strict, and not investigate the facts? A. No; the dictum in the case says that this follows, from the fact

that there is in this German foreign currency regulation an interference with credit rights in general; that from this it follows that the German foreign currency regulation cannot be taken into consideration as directly or indirectly. The dictum is broader than just to apply to this individual case.

Q. You agree, do you not, that what you are reading is pure dicta, and the facts in this case having nothing to do with the facts in the case at bar, or the hypothesis put to you by Mr. Boland? A. No, I cannot agree with this statement.

Q. All right; thank you. Didn't you state a moment ago that the policy which dictated this exception to the general Swiss rule was the policy of not having the German foreign exchange regulations interfere with the rights of Swiss creditors? A. It is the policy to protect Swiss creditors; yes.

Q. Thank you. And this case is one in which a Swiss creditor was protected by the exception to the general Swiss law? Isn't that true? A. In this case it is true—

Q. Thank you. And in the hypothesis which Mr. Boland put, and which is in fact a problem in the case at bar, there is no Swiss creditor; so the policy has no application.

Won't you agree with that? A. The policy has still application.

Q. How does the policy of protecting Swiss creditors have application to a case in which there is no Swiss creditor? A. Because, as in 90 per cent of the cases, the German foreign currency regulation may interfere with the Swiss creditor rights, the Supreme Court tells all Swiss courts never to regard it.

1674 Q. Where does it say that? Point out the words where it says that, even where there is no Swiss creditor, pay no attention to the German foreign currency regulations.

Does it say it in this case? A. In this case they made



just the statement I read to you, but that cannot be taken into consideration by a Swiss court, either directly or indirectly.

Q. Yes; but that is in a case where there is a Swiss creditor. A. I agree with you.

Q. And the policy is one of protecting Swiss creditors. I do not understand where you see any authority in this particular case relating to a problem where there is no Swiss creditor.

Mr. Boland: Just a minute, please. Your Honor, I think the stipulation should be read into this record. It is in the record, as I understand—

"It is further stipulated between the parties that Dr. Henggeler would testify that he knows that Mr. Fritz von Opel maintained a residence and home at St. Moritz, Switzerland, since about 1933;

"It is further stipulated between the parties that Dr. Henggeler would testify that he concluded many years ago that Fritz von Opel had established his residence and domicile in Switzerland;

1675 "It is further stipulated that Dr. Henggeler would testify that in his negotiations with the Swiss Tax Office he was advised by that Department of the Swiss Government that it had concluded that Fritz von Opel was a domiciliary of Switzerland subject to the tax imposed by Switzerland and that he knows of his own knowledge that Mr. Fritz von Opel has paid the assessed tax for many years."

In addition to which, the plaintiff in this case is a Swiss corporation; and as to the donee, I believe it has been stipulated that he was a Devisen Auslander. I think the facts establish that this plaintiff, Fritz von Opel, that Fritz von Opel was certainly a citizen of Liechtenstein.

Mr. Burling: In 1935, Mr. Boland?



Mr. Boland: At that time he was a resident of Switzerland.

Mr. Burling: But the question is whether this waiver in 1935 had effect. At that time he wasn't a domiciliary of Switzerland, in my opinion, and there was no stipulation on that.

The Court: I think I will let him have some latitude in establishing what the law of Switzerland is—he has testified on direct—and then let him say what it is, and you can argue the applicability later.

Mr. Burling: What was my question, please?

1676 The Court: I think you both agreed that this didn't agree with this situation specifically, and I think you asked if there were any other decisions.

Mr. Burling: I will ask him that.

By Mr. Burling:

Q. Do you have a decision with you which relates to—

Well, first I will ask you the narrow question—do you have a decision with you which relates to the waiver of either a valid usufruct or a claim to have a usufruct created when the waiver takes place between two German nationals, and the agreement takes place in Germany? A. I have no such case.

Q. Do you have any commentary which deals with such a case? A. There is no commentary which deals with a waiver between two German nationals, non-residents in Switzerland, about the waiver inside Switzerland.

Q. Now I ask you the broader question.

What authorities do you have with relation to any transaction between two Germans, which transaction takes place in Germany, which affects rights to securities in Zurich or in Switzerland? A. Between Germans?

Q. Yes, two Germans. A. That they are both in—  
1677 side Germany, and brought the case before a Swiss court, you say?

Q. Yes. A. And where it has been held invalid?

Q. That is right.

Mr. Gallagher: Does that question include in it the premise that they are residents of Germany?

Mr. Burling: It includes the words I put in it, if it is desired to ask on redirect.

By Mr. Burling:

Q. Do you understand my question? A. Once more, please.

Q. I ask you if you have any authority in which the Swiss courts refused to give effect to German law where there is a transaction carried on between two Germans, the transaction taking place in Germany, but affects rights to securities physically located in Zurich, or anywhere in Switzerland? A. In all the cases I went through, where German foreign currency regulations then applied, the Swiss court never investigated what was the nationality of the parties. So I cannot from my own memory tell you if in all these cases where the German foreign currency regulations were applied, there was a difference on that, because Swiss courts never investigated about that.

Q. If you cannot tell from reading the opinion, whether Swiss courts investigated it, how do you know that 1678 they investigated it or not? A. No; I can positively tell you that they did not investigate.

Q. How? A. Because if that would be material, they would investigate.

Q. If there is no case in which they did investigate, there are two possible hypotheses, are there not? A. Yes.

Q. One, that such a case never came before them; and, two, that they didn't pay any attention to it. A. Yes.

Q. How do you know which hypothesis is correct? A. I think both hypotheses are possible.

Q. And how do you know which one is right? A. I

think the second must be right, in so far as if this problem would have come up, the Swiss court would have settled it.

Q. If my name were Jones, then my name is Jones, but do you know? A. I think in every case you have first to read the whole case; and if no case can have any distinction drawn as to the nationality of the parties, in three big cases, then you may say nationality is without any importance.

Q. You can tell in this case, can you not, that the 1679 creditor is Swiss? A. In this case I can tell that the creditor is Swiss.

Q. Who is the creditor in the other two cases? A. For that I had really to bring in these two cases. I can tell you that. I have here a decision of the Swiss Supreme Court, First Civil Bench, February 1, 1938—

“In re (1) Allgemeine Elektrizitätsgesellschaft, Berlin”—

So that will be a German corporation—

“(2) Siemens & Halske Aktiengesellschaft, Berlin, gegen, Journaliag A. G., Glarus”—

So that in that case I agree it was a Swiss corporation who was probably plaintiff.

Q. So that we have now two of the three cases governing this subject, where it was a Swiss national— A. Yes.

Q. —who was the creditor being protected. And you don't know about the third case? Is that right? A. Let me think it over. I could not tell offhand the nationality.

Q. Then how do you know that there ever was a case which arose, analogous to the hypothesis, or the case at bar, where the Swiss courts were called on to decide between two German nationals, concerning a transaction carried out within Germany, whether or not to apply 1680 the German law? A. I can just state the Swiss court never investigated about nationality.

Q. How do you know it never investigated, sir, if the



problem never came up? A. In these cases they never investigated.

Q. But in these cases, Professor, it is clear from the face of the opinion that the court was protecting a Swiss creditor. A. Yes.

Q. How in the world does that tell you that the court would not investigate if in fact there was no Swiss creditor anywhere around? A. I think if, in the whole way of argument, they make no distinction between Swiss creditors, but if the Swiss court has discussed the law completely, it shows the court doesn't make a distinction.

Q. In a case involving a Swiss creditor? A. Sure, I agree with you.

Q. You wouldn't expect them to talk about cases where there wasn't a Swiss creditor, if in fact in the case before the court there was a Swiss creditor, would you? A. Can we put it this way?

The Court: I think I understand what each one of you is talking about. He says the language is general, and you say it is not.

1681 Mr. Burling: And I think I bought through this witness Your Honor, that there is no authority, except where there are Swiss creditors.

The Court: I understood that.

Mr. Burling: Then no further questions, Your Honor.

### *Redirect Examination*

By Mr. Boland:

Q. Assuming the hypothesis of a gift agreement in 1931, and a waiver valid under private law in the year 1935, then in the year 1941 the mother and father, after having made that waiver, come to Switzerland and sue the donee of the gift, who is at that time a resident of Switzerland, and sue him in connection with the rights which they had

already waived, is there any question under Swiss law as to whether or not the Court would enforce such rights which had already been waived? A. There is no doubt about it, that the Swiss courts would follow the dicta of the three precedents about the non-application of the German foreign currency provision as stated in these three cases. So that no right whatever of the parents could be enforced in the Swiss courts.

Mr. Boland: That is all, Doctor.

The Court: All right.

(The witness left the stand.)

Mr. Boland: At this time, Your Honor, we would like to recall Dr. Kronstein.

Mr. Burling: Mr. Boland, if your purpose is to identify the German nationality law, I will stipulate again as to the text of that law.

Mr. Boland: Would you show me what you are willing to stipulate?

Mr. Burling: Any paragraph or provision of the law. I am not aware there is any room for opinion here. I think it is just a question of what the statute provides.

The Court: Is this testimony lengthy?

Mr. Boland: No, it is not, Your Honor.

The Court: Maybe you can tell Mr. Burling what you want to prove by him in regard to the German nationality law.

Mr. Boland: The testimony is particularly in connection with the laws on German citizenship, Your Honor, and in that connection we would go into what is meant by "domicile" under German law.

The Court: Just tell him what you expect to prove, and see if you can stipulate it.

Mr. Boland: Well, we expect to prove that Fritz von Opel did not in fact maintain a permanent residence in

Germany, and that if he did not in fact maintain a permanent residence in Germany, that he could not have had a domicile in Germany, that being one of the essential requirements.

Secondarily, we intend to establish that the nationality law of Germany requires an application of the German Government to retain citizenship, and if such an application is not made, that the citizenship is lost upon the acquisition of another citizenship.

Mr. Burling: We can't stipulate that this witness could testify to anything concerned where Fritz von Opel lived.

The Court: Oh, no.

Mr. Boland: No.

Mr. Burling: I will stipulate that the German law relating to loss of nationality is as you have stated; that it required an application; that if you became naturalized in another country, you lost your citizenship in Germany unless you applied for and received permission to retain German citizenship.

The Court: Is the time limit fixed?

Mr. Burling: The incident which makes it relevant took place in 1939.

Mr. Boland: The time is upon the acquisition of the new citizenship, Your Honor. That is the relevant time.

The Court: All right.

Mr. Boland: Which citizenship has been stipulated.

Mr. Burling: And the permission would have to be received prior to the acquisition of the new citizenship.

Mr. Boland: Yes.

1684 The Court: All right. That covers that phase of it.

Mr. Boland: And on domicile, you will stipulate that permanent residence is an essential element of domicile in Germany, will you?

Mr. Burling: I don't know. What is the relevance of German domicile, if you please? If your purpose is to establish ultimately, Mr. Boland, that Fritz von Opel did



not have domicile or permanent residence in Germany in the year 1939, I will make that concession.

Mr. Boland: Yes.

Mr. Burling: That he did not, in the year 1939.

Mr. Gallagher: And prior to the time of his Liechtenstein citizenship, he had neither domicile nor permanent residence in Germany.

Mr. Burling: That is correct.

Mr. Boland: And prior to 1939?

Mr. Burling: I won't go back further. It isn't relevant.

Mr. Boland: If it becomes relevant as to the amount of time he spent every year in Germany.

The Court: Perhaps you had better go ahead with the testimony, if you can't straighten it out.

Mr. Burling: Your Honor, I stipulated all this witness could possibly know with relation to the law, that is, that what I have previously said about laws of citizenship 1685 applied only if you had neither domicile nor permanent residence in Germany; and I do stipulate that at that time, that is, at the moment of acquisition of Liechtenstein citizenship, Fritz von Opel did not have domicile and did not have permanent residence in Germany.

Mr. Boland: That is not enough, Your Honor. We intend to establish in this case that at no time from 1929 on did Fritz von Opel have domicile in Germany. We don't intend to establish that, as a matter of fact, through this witness, but through the law he will testify to, and applying that to the facts.

The Court: I suppose if it is the law that he did not have it at that time, it would also be the law that he did not have it continuously for ten years before; so that it wouldn't make any difference, would it?

Mr. Burling: No, Your Honor. That is why I say it is relevant.

The Court: I understand your point. But they want to say, as a matter of law, that if he didn't have it for ten years up to 1939, or for 1939, the law is the same.

Mr. Burling: My point is that the only relevance in this case to either permanent residence or domicile is what the situation was in 1939. And I am willing to concede that, both on the law and on the facts.

The Court: I should think that is true. I should 1686 certainly think that is true.

(To counsel for plaintiff): But I don't know what you are talking about.

Mr. Gallagher: We want the stipulation to go back, Your Honor, to 1929 at least, because under the German law Dr. Kronstein would testify it requires at least six months.

Mr. Burling: But that is totally irrelevant, if Your Honor please, as long as the ultimate result is stipulated to.

The Court: Well, I am trying to get you together. You can either agree or not.

Mr. Burling: I object to any testimony concerning this, after I have made the concession, on the ground that it is irrelevant.

The Court (to counsel for plaintiff): What is it you want to prove?

Mr. Boland: We are willing to take the stipulation offered, Your Honor, but in addition we want to show through this witness that the law as stated in Germany as applied to domicile applied to our situation; and that it cannot be stated this man had a domicile in Germany from 1929 to the present time.

Mr. Burling: But that is irrelevant, except as to nationality. There is no contention either way as to his domicile; it is immaterial. We also concede that he was a 1687 Devisen Auslander at all relevant times.

Mr. Boland: We think the facts will also establish affirmatively that he was a resident of Switzerland and we want to use that in connection with Dr. Kaufmann's expert testimony on the Swiss law. We think in the final argument mention can be made by the defendants of the lack of having this evidence in, if they are in the position to state this man

was not domiciled outside of Germany. We want it clearly shown that he was domiciled outside of Germany.

The Court: What you want to ask him is not the matter of fact?

Mr. Boland: Oh, no, Your Honor—"What is the law of domicile in Germany?"—that is what I want to ask him.

The Court: I will take it over the objection, and subject to being stricken later.

Whereupon, Dr. HEINRICH KRONSTEIN was recalled as a witness on behalf of the plaintiff and, having been previously duly sworn, was examined and testified further as follows:

*Direct Examination*

By Mr. Boland:

Q. Doctor, are you familiar with the citizenship laws of Germany? A. Yes, I am.

1688 Q. And do you know what citizenship law was in effect in 1929? A. The Federal Statute of July, 1913, relating to the acquisition and loss of federal and state citizenship.

Q. Was this statute ever amended, Doctor? A. Oh, yes.

Q. Are you familiar with the amendments? A. Yes.

Mr. Boland: (To counsel for defendant): You are going to stipulate on the loss of citizenship? And also that under Section 25 it is automatic?

The Court: He stated it, but just read in there what he stipulated, so that there won't be any mistake.

Mr. Boland: All right, sir—

It is stipulated by and between the parties that the statute of July 22, 1913, as amended, and particularly sections 24 and 25 of this act, pertain to the loss and acquisition of citizenship in Germany.

It is agreed that under section 25 a German citizen having



a domicile or permanent residence outside of Germany automatically loses German citizenship by acquisition of a foreign citizenship, unless he has been given a license by the German executive agency having jurisdiction, that is, the executive agency having jurisdiction over his last German residence, for the retention of German citizenship, notwithstanding the acquisition of a foreign citizenship.

The Court: All right.

Mr. Burling: I would like to add a sentence, Your Honor—

In case the German has received such permission from the authority having jurisdiction in the matter, then he does not automatically lose his German citizenship.

Mr. Boland: Yes, I will put that in.

By Mr. Boland:

Q. Doctor, are you familiar with the concept of domicile in German law? A. Yes.

Q. Could you describe briefly what it means? A. German law has two different concepts of domicile, one for infants and wives, and the other for men, for independent persons.

An independent person has his domicile if, first, he has a permanent place to stay, he settles down on a place to stay; and, second, if he has the intention to stay in this place for good, and too, run his life from this place.

Q. You are familiar with the American concept of domicile, are you, Doctor? A. Yes.

Q. Will you distinguish the two, please? A. The German concept of domicile is much closer to the American concept of residence, than it is to the American concept of domicile.

Under German law you cannot have a domicile without having residence, with the exception I gave before, wives or infants; and under German law, furthermore, you can have two or three domiciles, while under American law you can have only one domicile.

Q. Is this word "domicile" defined under German law?

A. Yes. The Civil Code, in Section 7, states what "domicile" is, and the courts have, since now 50 years, interpreted the fifth paragraph continuously.

Q. And is the definition in the Civil Code applied to citizenship laws? A. Yes. The domicile concept of the Civil Code of the B.G.B. is applicable to Section 24 and Section 25 of the German citizenship law. That is the decision of many courts in regard to the citizenship law.

Q. May a person have two domiciles under German law?

A. Yes.

Q. Under what circumstances? A. If he has two residences, and if he runs his life partly from the one and partly from the other.

For instance, if I live from January to June in the south, and from June to January in the north, and I have a place of residence, and I run my life from the north and 1691 from the south, respectively, I have two domiciles.

Q. So that the main concept in domicile under German law is the permanent residence, number one, that you actually, physically have a house in which to live? A. There is there an objective element of domicile and a subjective element. Both have to come together: One, the objective element is that you have a place to live, and the second is that you have an intention to stay at this place and run your life from this place.

Q. So that without this place there, regardless of what your intent is, you cannot have a domicile under German law? A. No.

Q. And, vice versa, even though you had a place and didn't have the intent to run your life from that place, you cannot have a domicile. A. No.

Mr. Boland: That is all we have of this witness, Your Honor.

Mr. Burling: No questions.

The Court: All right; you are excused.

(Witness excused.)

Mr. Gallagher: As I recollect Your Honor's expression at the noon recess, the plaintiff's case is permitted to be kept open until after the holidays?

1692. The Court: You have only one more witness, your think?

Mr. Gallagher: Yes, Your Honor; and in view of the very, very technical nature of this case we would like to have an opportunity to review this record.

The Court: Oh, yes.

Mr. Burling: I would like to call Mr. Calvin Houghland, so that he won't have to come back.

Mr. Gallagher: We have no objection.

The Court (to counsel for defendant): He is a very short witness?

Mr. Burling: Yes, Your Honor.

The Court: Very well.

Accordingly, CALVIN HOUGHLAND, called as a witness on behalf of the defendant, and being first duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Baum:

Q. What is your full name, Mr. Houghland? A. Calvin Houghland.

Q. And where do you reside? A. Brentwood, Tennessee.

Q. How old are you, Mr. Houghland? A. Thirty-two.

Q. Are you a graduate of any university? A. I  
1693 am not a graduate. I attended the University of Vanderbilt and the University of Virginia.

Q. What is your present occupation? A. I run the Direct Oil Company.

Q. And where is that located? A. We operate in five southern states.

Q. And its headquarters? A. In Nashville, Tennessee.

Q. How long have you been engaged in the gasoline business? A. Well, in one connection or another, since I was



14. I have operated this company, the Direct Oil Company, since 1937.

Q. And have you been associated with any other company in the oil business? A. Yes, sir, I was president and general manager of the Winn Oil Company.

Q. And how long were you associated with the Winn Oil Company? A. I started in 1938, and continued until I entered the United States Navy, in 1942.

Q. And upon separation from the United States Navy, you went where? A. I returned back to Tennessee, but I did not continue my activities with the Winn Oil Company.

1694 Q. And do I understand you to say you resumed your activities with the Direct Oil Company? A.

That is correct.

Q. Is that company in any way connected with the Spur Distributing Company? A. It is not.

Q. Have you ever met Mr. Fritz von Opel, Mr. Houghland? A. Yes, I have.

Q. Do you see him sitting in this courtroom? A. Yes, I do.

Q. Where is he sitting? A. Right there (indicating), writing.

Q. About when did you first meet him? A. In the winter or spring of 1935, the first time.

Q. Did you have occasion to meet Mr. von Opel in the year 1940? A. Yes, I did.

Q. Can you tell us approximately when and where? A. It was near Nashville, at the home of my father and mother, and it was in the early summer of 1940.

Q. By "early summer", what month do you have in mind? A. I am not completely sure as to the month, except it was either the latter part of May or the first part of July. I know it was not June, because I got married on June 1st and was gone the entire month of June.

1695 Q. And you recall it was around the time of your marriage? A. Yes, it was.

Q. Now, can you relate to us briefly the events of that occasion at your father's home in Tennessee? A. Yes I can.

Q. Will you do so, telling us who was present and under what circumstances? A. I was having dinner with my family, and Fritz von Opel was also there visiting in the house. And after dinner we adjourned to an upstairs sitting room and had a general discussion, mostly being taken up with Mr. von Opel telling us of his exploits and of his inventions.

Particularly I remember he said he was the inventor of the rocket, which impressed me very greatly. I also remember that we heard a newscast, and at that time the war situation looked very desperate and black; and I remember it so.

And Mr. von Opel spoke up and said—I remember I remarked that the war would take a very long time to get over with, and might even involve the United States—and Mr. von Opel corrected me at once and said, "It will not take a long time. By using rockets and secret weapons, we will finish up this war in no time at all."

Q. Who was present during this conversation? You referred to your family. Will you specify the individuals? A. My mother was there, and I don't remember whether it was my wife or my wife to be. But I do remember she was there. And my father was there also.

Q. Did your father hear this conversation? A. I am not sure. The conversation was over several hours, and I recall that particular night that he stretched out on the day bed and went to sleep, and I am not sure that he heard this part of the conversation or not.

Q. At the time of this conversation, did Mr. von Opel make any reference to military events at that time? A. Yes; he was very positive and showing pleasure at the progress that the Germans were making in France and in the low countries; and was quite pleased, because he stated

that some of his inventions were playing a particular part in it.

Q. When was the next time you saw Fritz von Opel? A. I think I saw him; I think the next time—I am sure that the next time I saw him was in 1941, February 4.

Q. Where did you see him at that occasion? A. At Palm Beach.

Q. How is it that you happen to be able to remember the date? A. I took it from my diary before I came up here.

Q. What were you doing in Palm Beach? A. My wife and I were visiting in Miami and we called up Mr. 1697 and Mrs. von Opel and they invited us to come up and spend the day; and we went sailing with them in the afternoon and stayed for dinner at night.

Q. At their home? A. At a home, as I remember, that they had rented.

Q. In which they lived? A. Yes, in which they lived.

Q. Is there any particular event during the course of that dinner which fixed itself upon your mind? A. Yes, there was.

Q. Will you please tell us what it was? A. Just as we were sitting down to dinner, which Mrs. von Opel had prepared, the phone rang and she answered it and called Fritz von Opel to the phone. And he said it was long distance, and he jumped up from the table and went into the hall, which was the adjoining room, and talked for some 25 or 30 minutes in German. And when he returned, he apologized for having been gone so long, and said he was talking to business associates in Hungary.

Q. How do you happen to recall this incident? A. Well, I before or since have never been around an overseas call, and I was very impressed with the cost that it must have involved, with such a call. And my wife and I talked about it in driving back to Miami that night.

Q. Did Mr. von Opel tell you at this time what was 1698 the subject of his conversation on the telephone? A.

No; I don't recall that he did.



Mr. Baum: That is all.

*Cross Examination.*

By Mr. Ingoldsby:

Q. Mr. Houghland, would you say it would be a fair statement to say that you and your father, with regard to one another, occupy the customary devotion which exists between father and son? A. I certainly would.

Q. And your employment at the present time is president of the Direct Oil Company? Is that correct? A. That is correct.

Q. How long have you had that job? A. I founded the company in 1937.

Q. And before that you were with the Winn Oil Company? Is that correct? A. That is not correct.

Q. Didn't you say you were with the Winn Oil Company at one time? A. I was. I took over the operations of the Winn Oil Company in 1938.

Q. And the Winn Oil Company, prior to—let me see if I get this—

Winn Oil Company remained a part of the Spur 1699 system, did it not? A. Yes, it always has been and still is.

Q. Wholly owned by Spur? A. That is my knowledge, yes.

Q. And where did you get the money to set up the oil business that you finally set up? A. I borrowed it from the American National Bank in Nashville.

Q. Is that Mr. Davis' bank? A. Mr. Davis is, I assume, a stockholder of the bank and works there. He is employed there, yes.

Q. In what position is he employed? A. I think he is chairman of the board now. He was president of the bank at the time I made this loan.

Q. And he is chairman of the board now? A. That is my recollection.

Q. And how much money did you borrow? A. Four thousand dollars.

Q. And who put up the collateral for that loan? A. I put up the collateral, in the filling station which I built myself. I signed over the filling station and all its property and equipment, to the bank as collateral.

Q. Did you put any of your own money into it? A. I had no money.

Q. Then you really started this business with no 1700 money at all? Is that correct? A. Four thousand dollars borrowed capital.

Q. Did your father sign a note on that? A. Yes, he did.

Q. So it was put up on his security? Is that correct? A. No, it wasn't put up totally on his security. I put up the security. He signed the note.

Q. And how large a business is that today? A. How do you mean that, sir?

Q. Total volume, dollar sales? A. I think it will do just short of a million dollars this year.

Q. You will do about a million dollars business a year, you say? A. I think we will reach that this year.

Q. And where do you operate—just in Tennessee? A. In five southern states.

Q. You said you didn't finish college, did I understand you to say? A. That is correct.

Q. How far did you go in college? A. Two years.

Q. I want to ask you this:

Did you discuss with your father the testimony which you gave today, before you gave your testimony?  
1701 A. Yes. Yes, I have.

Q. Did you tell him what you were going to say?  
A. Yes, I in general discussed it.

Q. You have told him that many times, haven't you? A. Not many times, no.

Q. You have discussed this case with him many times, haven't you? A. I certainly have.

Q. And you have discussed it with representatives of the Government, haven't you? A. Yes, I have—Mr. Burling and Mr. Baum.

Q. When was the first time you gave any statement to the Government in connection with this case? A. Oh, I think I talked my first time with Mr. Burling last spring or summer. I am not too clear on that.

Q. Last spring or summer was the first time you talked to Mr. Burling? A. I think so, yes.

Q. You talked to Mr. Burling about this case last spring or summer? A. I am not sure about it.

Q. Can you tell me when is the first time you talked to Mr. Burling about the case? A. I can't fix the date. I am nervous, and I don't remember. Let me see. I am  
1702 sure I talked to him this summer, yes—this past summer.

Q. You are sure you talked to Mr. Burling this past summer? A. Yes.

Q. Would I refresh your recollection any if I told you Mr. Burling didn't come into this case until about eight weeks ago? A. I do remember that now, and you are correct. Eight weeks ago. This is December. That would be late summer, wouldn't it?

Q. That would be early November, wouldn't it, or late October? A. Eight weeks, two months, and this is December—late October, possibly.

Q. When was the first time you talked to any representative of the Government about Fritz von Opel? A. Just eight weeks ago, when I talked to Mr. Burling, is the first time I remember talking to the Government.

Q. Are you sure about that? A. No. I am wrong. I talked to Mr. Baum. That is the summer visit I had in mind. That was last summer. I talked to Mr. Baum.

Q. Prior to that, did you talk to anybody in the Government about Fritz von Opel? A. I don't remember  
1703 discussing it with anybody in the Government, and knowing that they were in the Government.



Q. When was the first time you told anyone about the statements which you have attributed to Mr. von Opel? A. Well, I have discussed them with members of my family, and perhaps to some intimate friends, since that happened.

Q. But the first time you ever talked to anyone connected with the Government about Fritz von Opel, to your knowledge was last summer or early fall? A. Yes; that is all that I know of to my knowledge at this time.

Q. Do you recall ever talking to an FBI agent in connection with this case? A. No, I have never talked to an FBI agent.

Q. You are sure about that? A. I am sure about that.

Q. Now, I want to direct your attention to the statement in 1940, which you attribute to Mr. von Opel, in which he said they would finish the war, or "We will finish the war in no time at all, with rockets and secret weapons."

Did you have a discussion with him about what secret weapons he was talking about? A. I don't recall any secret weapon, other than his discussion of the rocket, and him saying he was the inventor of the rocket.

1704 Q. And you didn't discuss the point any further?

A. About other secret weapons?

Q. Yes. A. Is that the question?

Q. Yes, that is my question. A. Oh, he just made inference to other secret weapons. There were no other ones mentioned specifically.

Q. And I want to talk to you about this date of February 4, 1942. Did you give that date—

Mr. Gallagher: 1941.

By Mr. Ingoldsby:

Q. Did you give that date, February 4, 1941? A. Yes, I did.

Q. At that time you were about 24 or 25 years old? Right? A. Well, I am 32 now. I will have to figure it out.

Q. All right. Let us figure it out. You were about 24,

weren't you? A. Well, let me see. Forty-one from forty-eight is seven—about 25.

Q. And you were having dinner at Mr. von Opel's place in Florida that night? A. That is correct.

Q. As a matter of fact, you were down there on your honeymoon at that time, were you not? A. That is incorrect.

Q. You were not? A. No.

Q. And the reason that you remember this so distinctly is because you put it in your diary? Is that correct? A. It isn't a diary. It is a little calendar which I have kept for many years, that I keep in my desk and I always keep up with the places I have been, in order that I can prepare expense accounts which I turn over to my company. And I have that now, and I have kept them for many, many years.

Q. Then all that that would establish would be the fact that you had been at Mr. von Opel's for dinner, wouldn't it? A. The diary.

Q. Yes. A. All the diary said—and I can repeat it verbatim—is Palm Beach, February 4, 1941. That is all there was on that page.

Q. And from that you state that as the date when you were at Mr. von Opel's for dinner? A. Yes, that is correct.

Q. So that when you were attributing to him the statement that he came back to the table and said he had been talking to business associates in Hungary, you are relying entirely on your memory? Is that correct.

Q. And if the statement had been that he had talked to business associates from Hungary, you would then be in error, wouldn't you? A. From Hungary?

Q. Yes. A. No; I remember distinctly he said "to Hungary", because I don't recall the conversation, but there was some reference even at the dinner table about the expense involved in a call of that nature. I have tried to recollect the exact conversation, but can't.

Q. You don't recall he said business associates to Hungary? A. He talked to Hungary to business associates.

Q. You stated that before, the first time you stated it, as stating, he had talked to business associates in Hungary. Isn't that correct? A. In essence it is the same, isn't it?

Q. In words, it is a great deal of difference.

Did you bring that diary with you? A. No, I did not.

Q. Let me ask you this: While the war was going on, you never thought it important to report any of these conversations to the FBI? A. No, I didn't think it was  
1707 important that I report those conversations to the FBI.

Q. Did you think it was important that someone report them? A. I was under the impression that perhaps—

Q. Just a minute.

Mr. Burling: I submit he should be allowed to answer that question.

Mr. Ingoldsbey: Will you read it back, please?

The Reporter (reading): "Question: Did you think it was important that someone report them?"

By Mr. Ingoldsbey:

Q. All right. Can you answer that? You can answer that yes or no, can't you?

Mr. Burling: I submit plaintiff's haven't produced a witness yet who has answered yes or no.

The Court: (To the witness): Can't you say yes or no, and then, following it up with whatever else you want to say?

The Witness: Will you restate the question to me?

The Court: He said he wanted to know if you thought it was important that somebody reported those circumstances.

The Witness: I certainly feel it was important and feel



it is important now, that that information should be given to the Government.

(To Mr. Ingoldsby): Does that answer your question?

By Mr. Ingoldsby:

1708 Q. No, that does not answer my question. My question is, did you think it was important, while the war was going on, that the Government have the information you have just given here? A. Yes.

Q. You did think it was important? A. Yes.

Q. And you didn't give it to them at that time? A. I did not.

Q. Yet you were the only one who knew it, were you not? A. Absolutely not. It appeared in the newspapers at that time.

Q. What appeared in the newspapers?—the conversation that happened in your father's house in Nashville? That didn't appear in the newspapers, did it? A. What information, specifically, do you want me to give you?

Q. You have only testified concerning two things—one, the conversation in your father's house, and the other the statement made in Florida. My question is, did either of those things appear in the newspapers? A. Certainly the conversation in Florida did not, no.

Q. Well, did the conversation in your father's house appear in the newspapers? A. Not as conversation,  
1709 no.

Q. So that the fact is that the only time you considered this information important was at the time of this case? Isn't that correct? A. No; that is incorrect.

Q. Or the only time you considered it sufficiently important to give the information to the Government was at the time of this case? Isn't that correct? A. For me personally to give the information to the Government?

Q. For the Government to get the information. A. Will you restate that question in whole?

Q. My question is this: The only time you considered the information which you have just given, of sufficient importance for you to— A. Me personally?

Q. You personally—to turn the information over to the Government, was at the time of this case? A. That is correct.

Mr. Ingoldsby: That is all.

*Redirect Examination*

By Mr. Baum:

Q. Mr. Houghland, I believe you testified in answer to Mr. Ingoldsby's questions that you told other members of your family about the conversation which you have testified to today. Is that correct? A. Yes, that is correct.

Q: And do I assume correctly that by "members of your family", you included your father? A. Yes, that is correct.

Q. And did you tell your father about these conversations at or about the time they took place?

Mr. Ingoldsby: I object.

Mr. Burling: That is entirely admissible, if Your Honor please, because Mr. Baum is endeavoring to reply to an inference that this witness' information did not reach the FBI, and we are trying to establish that it did reach the FBI, and therefore it is relevant to rebut the inference which was created. We want to show he told his father and he knew his father told the FBI.

The Court: I think he can bring out, Mr. Ingoldsby, he felt it was his duty to do it, and if he didn't do it, if he has an explanation, he ought to be permitted to give it.

Mr. Ingoldsby: All right, Your Honor.

Mr. Baum: May I have the question re-read?

The Court: You asked if he told his father.

The Witness: Yes, I told him.

By Mr. Baum:

Q. And you know, do you not—

Mr. Ingoldsby: If Your Honor please—

Mr. Baum: Mr. Ingoldsby, I think you might learn  
1711 a simple rule of courtesy.

The Court: Address your remarks to me, gentlemen.

Go ahead.

By Mr. Baum:

Q. Do you know whether your father was interviewed by  
the FBI during this past war? A. Oh, I know it positively,  
sir.

Q. Did he tell you he was interviewed by the FBI?

Mr. Ingoldsby: I object, if Your Honor please.

Mr. Baum: I will withdraw it, Your Honor.

That is all.

The Court (to Mr. Ingoldsby): What is your objection?

Mr. Ingoldsby: The witness is telling what his father  
told him.

The Court: Yes.

Mr. Ingoldsby: I object on the ground of hearsay.

The Court: He testified in answer to your question that  
he personally didn't tell them. If his father told him that he  
told them then I think he is entitled to bring that out, that  
is, if you are drawing any inference from the fact that he  
didn't tell them.

I will permit it; go ahead.

Mr. Baum: I have no further questions, Your Honor.

The Court: Don't you want the answer?



Mr. Burling: I want the answer, Your Honor.  
 1712 The Court: All right; go ahead and ask him.

By Mr. Burling:

Q. Did your father tell you he passed this information on to the FBI? A. That is correct.

Mr. Burling: That is all.

The Court: Is there any recross examination?

Mr. Ingoldsby: No, Your Honor.

The Court: Well, January 3rd, gentlemen, at 10 o'clock—and my best wishes to all of you for the holidays.

(Accordingly, at 4:15 p.m., the trial was adjourned until Monday morning, January 3, 1949, at 10 o'clock a.m.)

1715

## PROCEEDINGS

Mr. Gallagher: Your Honor, at this time I offer in evidence Plaintiff's Exhibits 105 through 159, inclusive, which are covered by a stipulation entered into between counsel for the defendant and the plaintiff, identified as Plaintiff's Exhibit 160, the said stipulation reading as follows:

"It is hereby stipulated by and between the parties that if Adolph Gaeng were called as a witness for the plaintiff, he would testify that the list of books and records attached hereto and made a part of this stipulation are books and records kept in the regular course of business of Frima, Uebersee Finanz-Korporation, A. G., and Fritz von Opel through the year 1942; and it was the regular course of business to keep such books and records."

"It is further stipulated that all of the books and records described in the attached list had been made available to the defendant."

"Dated: January 3, 1949."

It is signed by counsel for the plaintiff and the defendant.

I now offer those exhibits and Plaintiff's Exhibit 160.

(Accordingly, the exhibits referred to in Plaintiff's Exhibit 160 were received in evidence as Plaintiff's Exhibits 105 through 159, inclusive.)

1716 (The stipulation just read was marked as Plaintiff's Exhibit 160 and received in evidence.)

Mr. Gallagher: At this time I should like to recall Mr. von Opel for just a few minutes with respect to two of the exhibits which we left off at the time we were having trouble identifying them.

Thereupon, FRITZ VON OPEL was recalled as a witness and, having been previously duly sworn, testified further as follows:

*Direct Examination*

By Mr. Gallagher:

Q. To refresh your recollection, Mr. von Opel, before we recessed we had been discussing Plaintiff's Exhibits 84 and 85, pages of which Mr. Burling had shown you, which reflected certain figures with respect to a Consortium O. As I recollect, you had stated that those showed different financial transactions that had taken place at that time.

I now show you what is identified as Plaintiff's Exhibit 153, a book of the Uebersee Finanz-Korporation, and direct your attention to pages 70, 71, and 72, page 70 being headed, "Fritz von Opel," page 71 being headed: "Consortium O" and page 72 being headed "Firma Trust Fund," and I will ask you if you can explain what those pages reflect. A.

They reflect corresponding pages of my own books or 1717 of Frima's books.

Q. Would it be correct to say, Mr. von Opel, that the first of the accounts was "Eritz von Opel"? A. Yes, sir; that is correct.

Q. And that that is the way you testified with respect to the balance sheet? A. Yes.

Q. Then it became "Consortium O"? A. Yes, prior to the formation of Frima, it was called Consortium O.

Q. Then it became— A. In 1934 it became Frima Trust Fund.

Q. Mr. Burling also showed you two exhibits which were taken from a book now in evidence as Plaintiff's Exhibit 152, headed, "Inventorum Book," a book of the Uebersee Finanz-Korporation, commencing 1937, pages 24 to 29, which pertain to the years 1940 and 1941, and reflect the investment by Uebersee in Transdanubia.

Mr. Burling addressed your attention to a figure 102,360 in 1940. Can you state what that amount reflects? A. That is a total amounts shown on konto korrent—accounts receivable.

Q. As of the end of 1940? A. As of the end of 1940.

Q. Then, I direct your attention to page 29 of 1718 this exhibit, the figure 109,918. Is that konto korrent— A. Pardon me; correct the figure; 109,918.50 Swiss francs.

Q. That is the figure as of the end of 1941? A. Yes, sir.

Q. That is the figure showing an increase in the investment of 7558.50 Swiss francs; is that correct? A. Yes, that is correct.

Q. I now show you Plaintiff's Exhibit 154, a page headed, "Transdanubia Bauxite, A.G., konto korrent," and direct your attention to the last line, March 3, 1941, 10,000 pengos, or 7558.50. Can you state what that figure reflects? A. That reflects payment to the lawyer, Dr. Gyula Salushinsey, of 10,000 pengos or, in Swiss francs, 7,558.50 Swiss francs; and this payment was made on March 10, 1941.



Q. Does this translation reflect what is on that page, Mr. von Opel? A. Yes; it is the last entry on this page.

Mr. Gallagher: I will offer this translation.

(The translation referred to was marked as Plaintiff's Exhibit 162 and received in evidence.)

Mr. Gallagher: I have no further questions of Mr. von Opel, Mr. Burling. Oh, I am sorry; I have one other.  
1719 I did not see this.

By Mr. Gallagher:

Q. Mr. Burling also introduced in evidence several documents with respect to collateral which was posted on behalf of Uebersee with the Union Bank of Switzerland with respect to a loan made by Transdanubia from the Hungarian Escompte Wechslerbank. I now show you Plaintiff's Exhibit 161, which consists of a number of pages from an exhibit of the plaintiff here, a copy of which has been given to the defendant, and ask you whether or not—

Mr. Burling: If the Court please, I think there is some confusion. I gave it to you earlier. 161 is a single sheet. May I inquire if 161, which is one single exhibit—

Mr. Gallagher: One single exhibit for the purpose of ease in not putting all in.

By Mr. Gallagher:

Q. I ask you if you can state what these pages reflect, Mr. von Opel. A. They reflect guaranty put up by Uebersee Finanz-Korporation through the Adler Bank with another Swiss bank for the purpose of a loan which Transdanubia had obtained from the Hungarian bank.

Q. Will you state when the guaranty first commenced?

A. The guaranty was first given on October 7, 1939.

Q. In what amount? A. It was in amount of 1720 5,000 Swiss francs.

Q. Was that amount increased? A. This amount was then increased to 20,000 Swiss francs.

Q. On what date? A. On December 23, 1939; and it was then increased to 32,000 francs and remained at this figure on April 16, 1940.

Q. Now, I notice there are several other pages included in this exhibit, Mr. von Opel. Would you explain what the other pages reflect? A. This guaranty had to be renewed quarterly, and we had to pay quarterly commission on renewal of this guaranty.

Q. Was this a transaction by Uebersee with the Swiss bank? A. With the Swiss bank, yes.

Q. If I understand you correctly, a commission was paid by you to the Swiss bank? A. To the Swiss bank to renew its guaranty.

Q. As evidenced from the exhibits which the defendant has heretofore introduced, that collateral was subsequently returned on November 17, 1942; is that correct? A. Yes, that is correct.

Mr. Gallagher: That is all.

### *Cross Examination*

By Mr. Burling:

1721 Q. You never saw any of these books, did you, until you saw them in your lawyer's office in Washington? A. I didn't see those slips, but I gave the orders.

Q. I say, you didn't see the books? A. Not the books, no.

Q. So what you have testified to it what you were told by your lawyers and Professor Kaufman about the books; is that right? A. Yes.

Q. You don't have any personal knowledge about this at all? A. They reflect my orders.

Q. You don't have any personal knowledge about what is in the books, do you? A. I have personal knowledge that I gave orders, and apparently it had to be in the books.

Mr. Burling: All right. Thank you.

*Redirect Examination*

By Mr. Gallagher:

Q. I understand by that, Mr. von Opel, that you gave orders with respect to the giving of the collateral originally and the increases in it? A. Yes. The increase—I think the last was April; if I remember correctly, April, 1940.

Mr. Gallagher: That is all.

1722 (The witness left the stand.)

1733

EVIDENCE ON BEHALF OF THE DEFENDANT

Thereupon—

JOHN MASON HOUGHLAND was called as a witness and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Burling:

Q. Please state your name. A. John Mason Houghland.

Q. Where were you born? A. I was born in Spencer County, Indiana.

Q. Will you state briefly what your education has been?



A. I am a graduate of the University of Chicago and was educated as a geologist.

Q. What has your business been since you were graduated from the University of Chicago? A. I have been in the oil business.

Q. Directing your attention to the year 1928, did you found any business in that year? A. I founded the Spur Distributing Company, yes.

Q. Will you state briefly what Spur Distributing Company was? A. I had conceived the idea that I might improve the system of retail marketing which had been in effect and was in effect throughout the United States.

Q. Retailing marketing of what? A. Of gasoline and oil.

Q. Filling stations? A. Filling stations, yes, sir.

Q. What was the idea that you had? A. My idea was that by putting large storage tanks in the filling stations themselves, I might by-pass bulk stations, or the wholesale activity and expense, and reduce the handling cost of the material.

Q. Did the word "Spur" mean anything in your business? A. It means a railroad spur. I mean the stations were located on railroad spurs, so I could ship in to those stations in tank cars.

Q. Are you presently associated with the Spur Distributing Corporation? A. I am, yes, sir.

Q. In what capacity? A. As president and general manager.

Q. How many stations does Spur have today? A. 254.

Q. Roughly speaking, where are they located? A. They are located east of the Mississippi River, except a few stations: One station in Missouri and a few stations in Arkansas; and there are no stations in the north, in New England or Michigan and Minnesota, and that area.

Q. Have you been consistently, throughout the period from 1928 to date, president of the board? A. Yes, sir.

Q. Now, directing your attention to the year 1930, did you have any problem of financing in that year? A. I did, yes.

Q. Will you state briefly what took place? A. Well, I felt that we had pretty well established—I started this Spur with very small capital, and we had pretty well established that the basic principle—new principle—of marketing was a sound one and that by getting more capital we could expand it, and so I went to New York and found a firm by the name of Burden Cole & Company, who were investment bankers, and they undertook an underwriting of the stock to raise more money for this expansion.

Q. Was a new issue of stock arranged at this time? A. Yes.

Q. Was there any special provision or unusual arrangement made in connection with the shares? A. Yes, there was. With each share there were warrants, and these warrants stepped up in price according to the time interval that had elapsed before they were exercised. That 1736 was in order to enable investors to have an opportunity to improve their holdings after they were satisfied that it was a profitable investment.

Q. Now, prior to the floating of this stock in 1930, who had control of the corporation? A. I did—that is, I together with one relative and one close friend.

Q. In other words, a group of your friends? A. That is right.

Q. At the time this stock was issued, did you make any arrangements or retain any rights with respect to control? A. We did. We made arrangements so that by the exercise of the warrants available to us, we could remain in control in case these other warrants were exercised.

Q. That is, you kept warrants yourself? A. That is

right; kept enough warrants to remain in control if we exercised them.

Q. Did there come a time when you learned that a large block of Spur stock had come into the hands of foreign investors? A. Yes, sir.

Q. When was that? When did you learn that? A. Well, when I learned that it was foreign investors was in July of 1932.

Q. Will you state how you learned that a large block of the Spur stock had been acquired by foreign investors? A.

I received a letter from Theodore Hoffacker.

1737 Q. What did he say to you in that letter? A.

He announced that he represented a group which had obtained control of our company; and then his statement was confirmed by the transfer agent in New York in a telephone call.

Q. By the way, have you at my request looked for this letter in your files? A. I have.

Q. Were you able to find it? A. I was unable to find it.

Q. Did Mr. Hoffacker request anything of you? A. He requested that a directors' meeting be called at once.

Q. Did he state the place at which he wished the meeting to be called? A. He said he wished it to be called in New York.

Q. Did you meet anywhere in respect to this request? A. I went to New York, yes, sir.

Q. With whom did you go? A. I went with Henry Hines, vice president of the company.

Q. Did you go with anybody else? A. I met there Joseph B. Thomas, who had been associated with me in the company.

Q. Where in New York did you meet? A. We  
1738 met at the office of our company attorney, whose name was Allan Fox. His office was on Trinity Place.

Q. Did you meet Mr. Hoffacker there? A. Yes, he came to the meeting.



Q. At that time did you have a conversation with Mr. Hoffacker about the Spur Distributing Company? A. I did, yes, immediately—either at the end of the meeting or immediately thereafter; I am not sure which time.

Q. Will you state in substance what that conversation was?

Mr. Ingoldsby: I think I will have to object to this, Your Honor.

Mr. Burling: May I ask the ground of objection, if Your Honor please?

Mr. Ingoldsby: It sounds to me like it is hearsay.

Mr. Burling: Fritz von Opel has testified that he made Hoffacker agent of the plaintiff corporation. He was managing agent of it and manager its investments. Anything said by Hoffacker is an admission by the plaintiff corporation through its agent.

Mr. Ingoldsby: I do not recall that that was the testimony.

Mr. Burling: Could I have a moment to look at the record, Your Honor?

The Court: I will take the testimony subject to 1739 its being connected up later. You can move to strike it if it is not connected.

By Mr. Burling:

Q. Will you state what Mr. Hoffacker said to you? A. I asked him whom he represented, and he said, "I represent the von Opel family."

I said, "Who are the von Opel family?"

He said, "They are the Fords of Germany, and they are people of immense wealth and can be very useful to you and to the Spur Company."

That is the general substance of it.

Q. Did Hoffacker say anything to you as to your future

relationship to Spur? A. Yes. He said that he wanted me to remain in the management of Spur.

Q. Did he say anything about directors? A. Yes. He asked that two new directors be appointed, and they were appointed on that occasion.

Q. Who were they? A. They were Theodore Hoffacker and the Baron Werner C. von Klemm.

Q. Baron von Klemm? A. Baron von Klemm, yes.

Q. When did you first hear the name Uebersee 1740 Finanz-Korporation? A. I cannot recall the exact time I heard the name, but it was at some time later, and the only definite knowledge I have of that time was some time in November of the following year.

Q. Did Hoffacker at any time tell you anything about Uebersee Finanz-Korporation? A. I can't recall his having said anything about Uebersee. He may have, but I can't recall it.

Q. Now, after Hoffacker told you that the von Opel family had acquired control of Spur, did you have any negotiations with anyone concerning the warrants which you had retained yourself? A. Yes.

Q. Will you state what those negotiations were and with whom they were carried on? A. Well, they were carried on with Hoffacker, and we had a voting trust on the original stock, which he wanted dissolved, and he wanted me to surrender my rights on these stock warrants, and I very naturally didn't want to do so.

There was a good deal of negotiation that went on through this period, and that finally resulted in contractual relations later.

Q. The contractual relations—

Mr. Ingoldsby: May it be made clear that my objection to all the testimony relating to Mr. Hoffacker stands 1741 on the same ground on which it was previously made?

The Court: Yes.

Mr. Burling: If Your Honor please, having in mind Your Honor's remark that he did not wish to leave rulings open, may I point to page 1021 of the record:

"Question: And did you arrange that the proceeds of the Opel shares were to be invested and managed by Hoffacker & Company?"

"Answer: Yes, I had a contract with him of this kind. I don't remember the details. I think he operated this account."

This is Mr. von Opel testifying.

"Question: And he bought and sold securities for Uebersee?"

"Answer: Yes."

"Question: In 1932 and 1933? Right?"

"Answer: Yes, it is possible."

"Question: And in the spring of 1932 you authorized Hoffacker to acquire the majority interest in an American corporation called Spur Distributing Corporation, didn't you?"

"Answer: In the spring of 1932?"

"Question: Yes; wasn't that when it took place?"

"Answer: Yes, it is possible."

"Question: I am not asking you whether it is possible, I am asking you if that is not when it happened."

1742 "Answer: I think prior to this time I had already acquired about five or ten thousand shares. And later on I acquired the majority. That is correct."

Then, skipping to the bottom of the page:

"Question: And did you then cause Uebersee to give Hoffacker proxies so he could vote the Spur stock?"

"Answer: Yes."



Mr. Ingoldsby: Then, I would say that undoubtedly with respect to the authority given to Mr. Hoffacker, Mr. von Opel would be bound by those statements provided they commenced in the spring of 1932. As I understand it, the first date—

Mr. Burling: The witness is now testifying to what took place in November, 1932, as I understand it.

Mr. Ingoldsby: All right.

The Court: All right. Then I will definitely rule it in evidence.

By Mr. Burling:

Q. What was the outcome of the negotiations between you, Uebersee, and Spur with relation to your warrants?

A. Well, the outcome was that I gave up my warrants and signed a contract with Uebersee which gave me a call on their Spur stock in the event that they should ever sell it, a call at the price—a 30-day call at the price that they decided to sell it.

1743 Q. That is to say, if Uebersee wished to sell and had an offer from a third party, they must have offered it to you, first, at that price, and you had 30 days in which to take up the offer? A. Correct.

Q. Did you receive anything else besides this contract?

A. Yes. I then entered into—Upon their arrangement, as their stockholder, I entered into a management contract with a profit participation with the Spur Company, and in consideration of my surrender of my warrants, the money for which was not needed at that time, an arrangement was made whereby I was to receive over a period of years, on an additional profit participation basis, after certain payments had been made to the stockholders, a sum of money which would total \$200,000 when it was paid—when it was finally paid or accumulated.

Q. Now, at the time you entered into this contract, had you ever seen Mr. Fritz von Opel? A. No.

Q. You recognize him here in court, do you? A. Yes.

Q. When and where did you see him for the first time?

A. The first time I saw him was in the late summer of 1934 in Paris.

Q. Will you state how you happened to be in 1744 Paris? A. I was in Paris with Mrs. Houghland on a tour.

Q. A pleasure trip? A. A pleasure trip.

Q. How did it come to pass that you saw Mr. von Opel there? A. Mr. Hoffacker arranged for me to meet Mr. von Opel.

Q. Will you describe your meeting with Mr. von Opel in Paris? A. Were staying at the Prince of Wales Hotel. Mr. von Opel came there and took us out to some very famous restaurant for dinner and then took us to a musical show called the Follies that night.

Q. Was that the Follies Bergere? A. I think so.

Q. What business discussion did you have with Mr. von Opel on this occasion? A. Well, there wasn't very much business discussed. I don't recall any specific business conversation.

Q. What did you discuss? A. Well, we discussed sport, I think, largely. Mr. von Opel told me some very interesting, diverting stories of his experiences as a balloon racer, motorboat racer, bicycle racer, and so forth. That general social conversation was the main occupation.

1745 Q. After the evening at the Follies Bergere did you see Mr. von Opel again during this trip to Europe? A. No.

Q. When did you see him next? A. I think it was the following year.

Q. 1935? A. Yes.

Q. And where did this meeting take place? A. It took place at my home, near Nashville.

Q. That is at Brentwood, Tennessee? A. Yes.

Q. Was anyone with Mr. von Opel? A. Mr. Hoffacker was.

Q. Did Mr. von Opel tell you where he had just been?

A. Yes. Mr. Hoffacker had already wired me. He was enroute from Texas to New York.

Q. Do you remember how Mr. von Opel came from Texas to Nashville? A. I remember it very vividly, because—

Q. What is it that fixes it in your mind? A. Well, he was driving a Mercedes car. I didn't remember having seen a Mercedes before that—quite a brilliant-colored car—and it was fixed in my mind because Mr. von Opel told us of some very remarkable speed that he had made on the trip.

1746 Q. How long did Mr. von Opel stay with you in Brentwood? A. I am not sure whether he spent the night or did not. In any event, it was a very short time; not over a night.

Q. Did he visit the office of Spur in Nashville? A. I don't recall his visiting the office of Spur.

Q. At any rate, you did not have any particular business discussion with him? A. I had some discussion with him about something that might be related to business—was related to business. That was a hose nozzle—a gas hose nozzle.

Q. Will you state what the conversation was about a hose nozzle? A. Well, we were having a lot of difficulty in the gasoline business by gasoline overflowing when it was put in tanks, and there was a lot of gasoline lost on that account; and in the course of our conversation with Mr. von Opel, I found out that he was very active in an inventive capacity and had a considerable setup in Berlin, I believe, to develop different inventions; and I explained to him this problem; and he said that it would be an easy one to solve, and he liked the idea very much, and thought it would be good—and proved to have been after it became very popular four or five years later—and that he would work on it.

1747 Q. After this visit did you receive any message from him concerning the hose nozzle problem? A. Yes, I did.



Mr. Burling: Mark this the next defendant's exhibit number.

(Telegram was marked Defendant's Exhibit 110 for identification.)

By Mr. Burling:

Q I show you Defendant's Exhibit 110 and ask you if that is the telegram which you received from Fritz von Opel (handing a document to the witness). A. Yes, sir, it is.

Mr. Burling: I offer it in evidence.

Mr. Ingoldsby: No objection.

What is the number on that?

The Deputy Clerk: 110.

(Defendant's Exhibit 110 for identification was received in evidence.)

Mr. Burling: May I hand it to Your Honor?

By Mr. Burling:

Q. Now, Mr. Houghland, when did you next see Mr. Fritz von Opel, if you can recall? A. If I may refer to my notes on it.

Mr. Ingoldsby: What are the notes on? Maybe we can agree. Do you mind telling me what the notes are of?

1748 Mr. Burling: It is a chronology, I believe.

Mr. Ingoldsby: That is perfectly all right.

By Mr. Burling:

Q. Have you gone through your files at my request and made notes as to when various meetings took place? A. Yes, sir.

Q. When, according to your present best recollection, did you next see Fritz von Opel? A. I next saw him in Montreal, in Canada, in 1936.

Q. Can you fix the approximate date of this meeting in Montreal? A. I think it was immediately before the 15th of June.

Q. Where did you meet Mr. von Opel in Montreal? A. At the Windsor Hotel.

Q. And who else was present? A. Mr. Hoffacker.

Q. Was anyone else present? A. I believe there were some other people there, but I did not know them.

Q. What discussion did you have with Mr. von Opel at that time? A. I can't recall any specific discussion at that time. I recall some explanation of our meeting there.

Q. What did Mr. von Opel say to you about what he was doing in Montreal? A. Well, he said that a 1749 lawsuit had been filed against him in the United states and that he was in Montreal in order to escape service on this suit, and that is why they had asked me to come to Montreal.

Q. How long did you stay there? A. Part of a day and night.

Q. And then you went back to Nashville? A. Yes.

Q. Did you receive a letter from Mr. von Opel later in that year? A. Yes, I did.

Mr. Burling: Mark that, please.

(Letter dated April 14, 1936, was marked Defendant's Exhibit 111 for identification.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 111 and ask you if that is the letter which you received from Fritz von Opel in 1936 (handing a document to the witness). A. Yes, it is.

Q. Now, I address your attention to the last paragraph, the words:

"The reason I write you about this is 1. because I think it may be of some interest to you, 2. because I meditate about buying these patents for a German factory we control," and I ask you if Fritz von Opel ever told you 1750 what factory he had in mind or who the word antecedent of the pronoun "we" is? A. No, I don't recall any discussion on that.

Mr. Burling: I offer 111 in evidence.

(Defendant's Exhibit 111 for identification was offered in evidence.)

By Mr. Burling:

Q. Did you see Fritz von Opel in the year 1936? A. Yes, I did.

Q. Where and at what time? A. He came again to Nashville and stayed at my house, and I think it was in December.

Q. What business discussion did you have at that time? A. I can't recall any specific discussion.

Q. In the year 1937 did you leave the United States? A. I did.

Q. Where did you go? A. I went to Europe.

Q. Was it a pleasure trip or business trip? A. Pleasure trip.

Q. You went with your wife? A. And family, yes.

Q. On that occasion did you receive any communication from Fritz von Opel? I will show you Defendant's Exhibit



59 and ask you if that is the cable which you received from Fritz von Opel (handing a document to the witness). A. Yes, that is.

Q. And you handed it to me at my request, is that correct? A. Yes.

Mr. Burling: Your Honor, this reads, addressed to Mason Houghland, American Express, London.

"Hope to arrange seeing you somewhere on your way back. Please mail me probable route you take. Regards. (Signed) Fritz von Opel, Kampen Sylt."

By Mr. Burling:

Q. I show you Defendant's Exhibit 60 and ask you if that is also a wire which you received from Fritz von Opel (handing a document to the witness). A. Yes, it is.

Mr. Burling: And that reads:

"Would your plans permit seeing me in or near Hamburg any date after August 25. Beaucoup de plaisir. Regards. Opel, Zurich. Dolder Hotel."

By Mr. Burling:

Q. I show you Defendant's Exhibit 61 and ask you if that is a letter which you received from Fritz von Opel (handing a document to the witness). A. Yes, it is.

Q. That also has to do with your meeting in Europe? A. Yes.

Q. And I show you Defendant's 62 and ask you if that is a wire which you received from him (handing a document to the witness). A. Yes, it is.

Mr. Burling: And this reads:

"Pleased meeting you morning September. Vierzehn Hotel, Vier Jahreszeiten, Hamburg. Frankenberg not present in Zurich. Regards, Opel."

By Mr. Burling:

Q. Had you met a man named Frankenberg at this time?  
A. I had not, sir.

Q. What did you understand by that when you received the message, "Frankenberg not present in Zurich"? A. Well, I understood that for some reason I was to meet Frankenberg. I can't recall the exact thing. This was an explanation that I could not see him in Switzerland, where I was going and did go.

Q. Did you meet Fritz von Opel in Hamburg in 1937?  
A. I did, yes, sir.

Q. Where? A. I met him at a hotel. I can't recall the name of the hotel.

Q. Did you have a discussion with him at that time? A. I did, yes.

1753 Q. Will you state what the discussion was? A.

He discussed with me the synthetic tire and its development, which was something new in my knowledge, and he told me that he was interested in the development of synthetic tires.

Q. Did he say something further about it, or what the nature of his interest was? A. He did not tell me anything as to the nature of his interest, but he discussed it quite a lot, and I was interested in it. I mean as a subject, and he asked me if I thought synthetic tires could be sold in America and if we could sell them through the Spur filling stations.

Q. Did he take you anywhere in Hamburg? A. Yes. He took me to some automotive place which I judged to be a garage.

Q. Can you recall anything about where the place was? A. Yes. I can recall that it faced on a very small park; that's all. I could not recall any street.

Q. And what did he say to you about why he wanted you to go to this place? A. He wanted to show me synthetic tires that were being used.

Q. Were they mounted on a vehicle? A. Yes; they were mounted on a truck.

Q. What did you say to him about synthetic rubber tires? A. Well, I told him, in response to his inquiry as to whether or not they could be profitably sold in America—I told him that America was having a deluge of natural rubber tires, and they seemed to be below the cost of production. It wasn't very profitable for anybody; and I doubted, unless these could be sold at an astoundingly low figure and would be productive of unusual results, that it would be profitable.

Q. Did you have any further discussion with him about business? A. I am sure I must have, but I can't recall any particular discussion. I mean, there must have been some question as to how Spur was getting along, and so forth.

Q. Did you leave von Opel in Hamburg or did you go somewhere else with him? A. I left him in Hamburg.

Q. Did he tell you where he was going next? A. Yes; he was going from there on a trip through Berlin and Wiesbaden and Budapest.

Q. Now, coming to another subject, will you state whether or not you ever developed an idea relating to subsidiary corporations which should be formed by Spur? A. Yes, I did.

Q. Will you state what that idea was and when you developed it? A. Well, I developed the idea probably around the latter part of 1934 and put it into execution in 1935. The idea was to use a much simpler outlay, a much lower cost operation, with much simpler buildings and equipment, and go into small towns with the spur type of station, but on a different basis and with separate corporations, wholly owned corporations.

Q. Did Spur set up a wholly owned subsidiary? A. Yes.

Q. What is the name of that? A. Winn Oil Company.

Q. When was that set up? A. In 1935.

Q. Now, did you ever have a discussion with Fritz von Opel concerning the idea of setting up a series of small subsidiaries? A. Yes.



Q. When did that take place? A. It took place in October, 1937.

Q. Where? A. In New York.

Q. Now, will you state first where in New York in October, 1937, you first met Fritz von Opel? A. At the hotel where I was staying.

1756 Q. What is that hotel? A. Barclay.

Q. And Fritz von Opel came to your hotel, did he? A. Yes.

Q. Did you go anywhere then? A. Yes.

Q. With him? A. Yes.

Q. How? On foot, in a taxi, or how? A. On foot.

Q. While you were walking with Fritz von Opel did you have any discussion with him? A. Yes.

Q. Will you state what the discussion was? A. We discussed the results that we had gotten from the Wynn Oil Corporation, and I discussed with him the possibility of our starting more companies of the kind. I hoped to start as many as ten companies, which would require a considerable amount of money. Since we had probably an investment in the original company that was small—it was only \$25,000—a number of them would have cost a great deal, and I discussed that general situation with him.

1757 Q. Did he say anything to you as to where you were going in this walk? A. Yes. He had before we started.

Q. What did he say to you? A. He said that Dr. Frankenberg was in this country and that he wanted me to meet him and to present the proposal to Dr. Frankenberg, and at that time he told me very clearly who Dr. Frankenberg was.

Q. What did he say to you as to who Dr. Frankenberg was? A. He said that Dr. Frankenberg was his father's agent.

Q. Did he say anything to you as to why he wanted you to meet Frankenberg? A. Yes. He said that Dr. Frankenberg would have to pass on anything of this magnitude and that I would have to present it to Dr. Frankenberg.

Q. Where did you go? Where was the end of your walk? A. The Plaza Hotel.

Q. In New York? A. In New York, yes.

Q. When you got to the Plaza what did Fritz von Opel do? A. He called Dr. Frankenberg's room and asked Dr. Frankenberg to come down and meet us.

1758 Q. And did he do so? A. Yes.

Q. That was the first time you had met Dr. Frankenberg? A. Yes.

Q. Where did you go then? A. We went into a lounge in the front part of the hotel and sat there and talked.

Q. And what was the conversation between you and Frankenberg and von Opel? A. It largely consisted of my outlining the proposal I had in mind about the subsidiary companies and of interrogation on the part of Dr. Frankenberg as to this plan.

Q. And what did Dr. Frankenberg say about the plan? A. Dr. Frankenberg asked a number of very intelligent questions about it, went into it rather thoroughly, and finally reached the conclusion that he did not think it advisable to enter into it at this time.

Q. What did he say to you? Do you remember his words? A. I don't remember his exact words, no. He said, "I don't think it is advisable to undertake it at this time."

Q. And while you were with Frankenberg did Fritz von Opel say anything? A. I am sure he did, yes. The general conversation was an exposition of the plan by me and answering questions by Dr. Frankenberg.

1759 Q. In other words, he just sat by; you were interrogated by Frankenberg; is that correct? A. That is right.

Q. Did you leave alone or did you leave with Fritz von Opel? A. I left with Fritz von Opel.

Q. Again, did you go on foot or were you in a taxi? A. We walked.

Q. Did you have any conversation after you left the Plaza Hotel? A. I did.

Q. Will you state what that conversation was? A.

Well, he said he was sorry that Dr. Frankenberg did not approve the idea; that he himself did approve the idea and he thought it was a wise one, which, incidentally, it certainly turned out to be, but that Dr. Frankenberg was his father's financial representative; that there was nothing that could be done upon a decision of this sort after Dr. Frankenberg did not approve.

Q. Did he say as to whether he, Fritz von Opel, would set aside Frankenberg's opinion? A. There was no comment of that kind.

Q. When did you next see Fritz von Opel? A. When did I next see him? Let me refresh—It was the following year.

1760 Q. That is 1938? A. Yes.

Q. And where did the meeting take place? A. It took place in Nashville, at my house.

Q. Can you fix the approximate time—that is, the month? A. I am not too sure of it, but I think it was around October.

Q. How long did Fritz von Opel remain with you near Nashville on this occasion? A. On this occasion for several days.

Q. Was he working in the Spur offices during the day? A. No.

Q. He was just staying with you as a social visit; is that correct? A. That is right.

Q. Did you have any conversation concerning business or finances on this occasion? A. I am sure we must have had some. I am sure I must have answered some inquiries. There was no detailed conversation about finances.

Q. Did you have any conversation concerning the Opel Motor Works on this occasion? A. Yes. On this occasion he told me—the first time that I had heard the story—that is, from him—of the sale of the Opel Motor Works stock to General Motors.

Q. Did he say anything else about this topic? A. Yes; he said a good deal about it.

Q. Will you tell us what you can recall of that, please?



A. Well, I don't recall a great deal about it. I do recall the substance of the conversation. He told me briefly that he got into this question of taxes and of tax avoidance as related to both himself and to me.

Q. Did he say anything about the sale of the Opel Works in relation to taxes? A. Yes. He said that under the method of the sale, they had been able to avoid a great deal of tax.

Q. Did he say anything about how Uebersee Finanz-Korporation was held at this time? A. Yes. He told me that as part of the tax avoidance—he told me that they had sold the shares of Uebersee Finanz-Korporation to some Swiss nationals.

Q. Did he say why they had done this? A. Yes; he said to avoid some tax.

Q. Did he tell you who the Swiss nationals were? A. I asked him who the Swiss nationals were, and he laughed and said, I don't know them.

Q. Did he say anything about how the certificates of Uebersee were held at that time? A. He said that they were endorsed in blank and returned to the posses-  
1762 sion of the Opels.

Q. Did he discuss with you any problem involving your own personal tax situation? A. Yes, he did.

Q. Will you state what that conversation was? A. Well, he pointed out to me that I was paying quite a lot higher income tax than he was as a foreigner and that I might have formed a foreign holding company and relieved myself of a lot of taxation, but that a recent regulation, or something of the sort, made that a more doubtful proposition, but that by taking Swiss citizenship and then using a holding company, I could have a much lower tax rate.

Q. What did you say to him about that? A. Well, I did not know whether he was in jest or in earnest, and I was flabbergasted about citizenship. I didn't know anything about it, so I guess that was just laughed off.

Q. Now, that was the fall of 1938.

Coming now to 1939, did you have any further communi-

cation in that year with Fritz von Opel? A. Yes, I did.

Q. Will you state what that was, please. A. Well, the communications that I recall were some wires, and I believe a letter, relating to my meeting him some place in Europe.

Q. Where were you at the time? A. In the United States.

Q. But you planned to go to Europe in the summer of 1939? A. I planned to go to England and that I might go to Europe.

Q. At any rate, you planned to cross the Atlantic? A. Yes.

Q. Now, I show you Defendant's Exhibit 63, and ask you if that is a wire which you sent to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: If Your Honor please, this reads, addressed to Opel, Chalet Kulm, St. Moritz, Switzerland:

"Coming abroad. When can I meet you for one or two days, preferably during first half of August?"

(Signed) Houghland."

By Mr. Burling:

Q. I show you Defendant's Exhibit 64 and ask you if that is a reply which you received from Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: And that reads:

"Would meet you any time Hamburg, but would like both of you to come to our estate near Cologne after August 18. Regards, Opel. Kampen Sylt."

1764 By Mr. Burling:

Q. I show you Defendant's Exhibit 65 and ask you if that is a wire which you sent to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Mr. Burling: This reads:

"Opel, Kampen Sylt. Delighted to accept invitation. Suggest about August 25 if convenient to you. Address. American Express, London"

By Mr. Burling:

Q. Now, did you come to London in the month of August, 1939? A. Yes, sir.

Q. Where were you staying? A. At the Carlton Hotel.

Q. Will you state whether or not you received any message from Fritz von Opel? A. Yes, I did.

Q. How was that? A. I received a telephone call from him.

Q. Where did he say he was? A. The call was from or through Cologne.

Q. Through Cologne? A. Cologne is the name I got.

Q. And were you in London? A. Yes, sir

1765 Q. Will you state what the conversation was?

A. Well, he was renewing his invitation for Mrs. Hougland and myself to come to their estate in Germany and visit.

Q. Will you state what you said and what he said on the telephone on this occasion? A. Well, England was under great tensiety at the time and war looked imminent, and I was very much alarmed, and I told him that I was and that I felt there was going to be a war and that I did not think it was advisable for me to come.

Q. What did he say in reply to that? A. And he said, "There isn't going to be much of a war. The English won't fight. All we are going to do is take off a little slice of Poland."

Q. You did not understand that Liechtenstein was going to declare war on Poland, did you? A. No, sir.

Q. Did he say anything else on this occasion? A. He continued to urge me to come into Germany.

Q. What did you say to him as a result? What was the outcome of this particular conversation? A. I told him



that I did not feel that it would be safe to make the trip, but that I would call him back the next day.

1766 Q. And did you call him the next day? A. Yes, sir.

Q. Will you state what the conversation was on this occasion? A. Well, upon the next day I told him that I definitely made up my mind that it would not be wise to make the trip.

And he said to me, "Well, I think you are wrong. I think you ought to make the trip. I would like very much for you to meet my father, and for my father to meet you." He said, "After all, you work for my father and it is rather important that you know him."

And I said that, "I appreciate that and would like very much to meet him," but I was afraid to cross the channel.

Q. And did you cross the channel? A. No, sir.

Q. What did you do? A. I scurried around and got me a boat home within a day or two and came to America.

Q. Do you remember the name of the boat? A. Yes, sir, The Normandie.

Q. That was the last time The Normandie crossed the Atlantic; is that right? A. Yes, sir.

Q. Do you remember the date? A. I could not fix the date absolutely, except that it was the latter part of August, and I remember that after we got home it was 1767 only a day or two before war was declared.

Q. When did you next hear from Fritz von Opel? A. I think it was in September of that year.

Q. I show you Defendant's Exhibit 105 and ask you if that is a wire which you received from him (handing a document to the witness)? A. Yes, sir, that is.

Mr. Burling: Your Honor, this is a cable reading:

"Mason Houghland, care of Spur Distributing Company. Overseas investors intend selling participation to meet other obligations what I personally deeply regret. Please communicate Ulrich, Shreveport, who is informed ac-

cordingly. Intend to sail soon. Regards, Fritz. Doldegrand, Zurich."

By Mr. Burling:

Q. Did you take any action after you received this wire?

A. Yes, sir. A few days thereafter, two or three days thereafter, I sent cables to Adler and Company, Dr. Frankenberg and Mr. Gaeng, and to Uebersée, calling to their attention the contract I had which gave me a call on the stock.

Q. And I show you now Defendant's Exhibit 112 and ask you if that is a copy of the wire which you sent (handing a document to the witness). A. Yes, sir.

1768 Mr. Burling: I offer it in evidence.

(Defendant's Exhibit 112 for identification was offered in evidence.)

By Mr. Burling:

Q. Did you also make any telephone call in connection with this message in September, 1939? A. Yes, sir.

Q. To whom did you call and where was the call placed?

A. I called Fritz von Opel in Zurich, Switzerland.

Q. From where? A. From Nashville.

Q. Have you ever before or since made a transatlantic telephone call? A. No, sir.

Q. So it is clearly fixed in your mind; is that right? A. Yes, sir.

Q. Will you state what the conversation was on the telephone? A. I told Fritz that I was greatly surprised that they were going to sell the Spur stock, that I thought that he regarded it very highly and that its future was bright, and he told me that he did so regard it highly, but that his father had determined to have the stock sold and had issued orders to Dr. Frankenberg to sell it, and although it was greatly against his wishes, there was nothing he  
1769 could do about it.

Q. That is, he, Fritz? A. That is right.

Q. Did you have any further talk with him on the phone?  
 A. Yes, sir. I asked him to see if he could get me an option on the stock for a reasonable price and for a reasonable length of time which might enable me to attempt to place the stock in hands that would be friendly to me.

Q. And what did he say he would do about that request?

A. He said that he would try very urgently to do it and would promptly communicate with me.

Q. Did he say he would talk with anybody about your request? A. Yes.

Q. With whom? A. He said he would talk with Dr. Frankenberg and he would talk to his father.

Q. And did you receive a message thereafter from Fritz von Opel regarding this offer? A. No. I received a communication through Mr. Ulrich from him.

Q. What was the substance of that? A. The substance was that they could not arrange the option.

Q. Now, did the Opels ever sell the Spur stock?  
 1770 A. No, sir.

Q. Were you advised as to why they changed their minds? A. No, sir.

Q. Now, when did you next see Fritz von Opel in person? A. In the following year, 1940.

Q. What season of the year, if you recall? A. Early summer.

Q. And where was it? A. At my house.

Q. At Brentwood? A. Yes, sir.

Q. How long did von Opel stay with you on this occasion? A. He stayed several days.

Q. Did you have any discussions with him at this time? A. Yes, sir; a number of them.

Q. Did you have any discussion with him when your son, Calvin Houghland, was present? A. Only part of one.

Q. Were you present here when Calvin Houghland testified? A. Yes, sir.

Q. Do you recall the conversation which he testified to which he said took place in your upstairs sitting room?



A. I recall the commencement of it. I was very tired 1771 and, as I recall it, went to sleep.

Q. Now, will you state what you can recall of your discussions with Fritz von Opel in the spring of 1940 at Brentwood, Tennessee? A. Yes. I recall very vividly his quite thrilling experience—the recital of his thrilling experience in being captured by the British at Gibraltar.

Q. Will you state what he said about that experience?

A. Well, he said that the British took him off this ship and put him in a prison cell in the fortress at Gibraltar and that it looked like it was going to be a very difficult time for him, but that he succeeded in fooling them about his Liechtensteinean passport; and I remember very clearly he said, "You know how stupid the British are," and he said, "I made an acquaintance with a young English guard officer who liked to play chess, and we played chess every evening, and I finally convinced him that I should be released, that I was a fugitive from the Nazi system, and anti-German, and that the English did release me."

Q. Did he say anything about a passport? A. Yes, sir. I just mentioned that. He said that he fooled the English with the Liechtensteinean passport.

Q. Did he say how he had acquired this passport? A. Yes, sir.

Q. What did he say about that? A. He said that 1772 he bought it for the equivalent of ten thousand American dollars.

Q. During the course of this visit did you have any particular discussion concerning the Spur business? A. I am sure that he asked he how the Spur was doing, but I don't recall any—there was no detailed examination of anything about that.

Q. He did not give you any orders? A. No, sir.

Q. Now, later on in the summer of 1940 did you see him again anywhere? A. Yes, sir.

Q. Where was that? A. I saw him on Nantucket Island, where he was in residence at the time.

Q. How did you happen to be there? A. Our daughter was visiting a schoolmate on Martha's Vineyard, and her mother and I went up to Martha's Vineyard for a few days, and Fritz had written me a postal card telling me he was on Nantucket, asking me to come over, and I went over and paid a social visit to him on Nantucket.

Q. Did you have any business discussion with him on this occasion? A. I am sure there must have been some inquiry, but there was no serious business discussion.

1773 Q. He did not give any orders concerning Spur at this time? A. No, sir.

Q. Now, did you thereafter see him anywhere? A. Yes. I think that it was along about the month of December that he and his wife came to our house and visited.

Q. This is December 1940? A. Yes.

Q. Did you have any business discussion with him at this time? A. I can't recall any.

Q. When did you see him for the last time before you saw him here in court? A. I think it was in New York in, probably July or August in 1941.

Q. Now, before that did you see him in Georgia? A. Yes, sir; I saw him in Savannah, Georgia.

Q. I show you Defendant's Exhibit 106 and ask you if this is a copy of a letter which you wrote to Fritz von Opel (handing a document to the witness). A. Yes, sir.

Q. I show you Defendant's Exhibit 107 and ask you if that is a note which you received from Fritz von Opel in Savannah, Georgia (handing a document to the witness).

A. Yes, sir.

1774 Q. Now, did you have a conversation with Fritz von Opel in Savannah? A. Yes, sir.

Q. That is the De Soto Hotel; is that correct? A. Yes, sir.

Q. Will you state what the conversation was? A. I endeavored to persuade Fritz to sell his Spur stock, because I felt that if we did go to war with Germany, which might happen, that it would be very detrimental to the Spur

Company to have a German ownership, and I endeavored to convince Fritz that the thing to do was to sell or cause to be sold this Uebersee's stock.

Q. Can you remember any more about what you said about that topic? A. I mean Spur stock held by Uebersee.

Q. Yes. A. Yes. I told him that after the last war—or during the last war—that a great many German holdings in America were seized and confiscated, and that if we went to war this one would be, doubtless, and it certainly seemed to me to be wise to sell it, and he explained to me in great detail how he had safeguarded the stock.

Q. And what did he say about that? A. He said, "We Germans and my father and I have all thought this out, of American holdings," and he said if, in the unlikely 1775 event that America should go to war, these holdings would be found in the hands of Swiss nationals.

And I said, "Well, Fritz, it is perfectly possible that Switzerland might get involved in the war."

And he said, "It is improbable, but if it should come to happen, they will be found in the holdings of a holding company in a neutral Latin-American country."

Q. Did he mention the Sociedad Commercial Montefranco? A. No, sir.

Q. He did not specify what Latin-American holding company he was talking about? A. No, sir.

Q. Did you refer to the fact that in 1939 it had been proposed to sell the Spur shares held by Uebersee? A. I did. I recalled at the time that his father had wanted to see the stock in 1939 and that he might be very receptive to the idea of selling it now; and he said that his father would not be, that he was sure his father thought very highly of it.

Q. In other words, Fritz von Opel did not listen to your advice about what would happen to the Spur shares; is that correct? A. That is right.

Q. And it turned out that your advice was correct; 1776 is that right? A. In that case.

Q. Did you have any discussion with him in the



De Soto Hotel in Savannah? A. I am sure I did, but I don't recall any specific discussion.

Q. Perhaps I can refresh your recollection. Did he say anything to you about a yacht? A. Yes, sir. He told me that he had either bought or had contracted for a yacht.

Q. Did you have any discussion with him at that time about the yacht? A. Yes. He showed me a lot of maritime maps of the coast, and I said, "Fritz, you ought not to carry those around, because, after all, you are a German, and if we should get in war and you are in possession of a lot of coast maps, it might embarrass you."

Q. When you said to Fritz von Opel, "After all, you are a German," what did he say to you? A. He did not say anything; he just laughed.

Q. He did not say, "No. I am not a German. I am a Liechtensteinean," did he? A. No, sir.

Q. By the way, did you ever have occasion to tell any representative of the United States Government about this incident? A. Yes, sir.

Q. When did that take place and under what circumstances? A. It took place when I was being interrogated by F. B. I. agents at my home in Nashville.

Q. Now, will you state how you came to be talking to an F. B. I. agent? A. Yes, sir. I can state that—

Mr. Ingoldsby: Will you fix the time of that, please?

By Mr. Burling:

Q. Will you fix the time and then describe the circumstances of how you happened to be talking to an F. B. I. agent? A. Well, I can't fix the time with accuracy, but my memory of it is that it was in January, 1942.

Q. Will you state where the interview took place and under what circumstances, and particularly fix the time of day, please? A. It was at night, about, perhaps, 10, 10:30 at night, at my home in the country near Brentwood, and the bell rang, and there were knocks on the door,

and I had gone to bed, and I went down and opened the door, and two strange men were standing at the door. We lived quite far in the country and about a mile back from the road, and I did not know what was afoot, but

I admitted them, and they came in and sat down in 1778 the library and commenced to ask me questions; and

I didn't know what it was all about, and I declined to answer their questions, and then they showed me their badges, that they were agents of the F. B. I.

Q. And then you told them of your acquaintance with Fritz von Opel: is that correct? A. I answered as truthfully as I could every question that they asked me; yes, sir.

Q. And they were questioning you about von Opel; is that right? A. Yes, sir; and about my German ownership of Spur Company and any other German that might be connected with it.

Q. Had you previously requested these gentlemen to call upon you? A. No, sir.

Q. Did they think you were a United States citizen at that time? A. No, sir; they suspected me of being a German.

Q. But you were not? A. No, sir.

Q. Did you ever discuss with Fritz von Opel the question of nobility or title? A. No. On one occasion when I was at Nantucket the Boston papers were carrying great columns of publicity about the Baron Fritz von Opel, 1779 and he mentioned on that occasion that his lawyer, Mr. Isadore Kressel had suggested to him that he leave the title off in the United States.

Mr. Burling: You may inquire, Mr. Ingoldsbey.

The Court: I suppose you cannot complete this in the next three or four minutes?

Mr. Burling: I said I was through, Your Honor.

The Court: Yes. I was speaking to them.

2 o'clock.

(At 12:21 p. m. a recess was taken until 2 p. m.)

(The trial was resumed at 2 p. m., upon the expiration of the recess.)

Thereupon—

JOHN MASON HOUGHLAND resumed the stand and, having been previously duly sworn, testified further as follows:

*Cross Examination*

By Mr. Ingoldsby:

Q. Mr. Houghland, I wanted to ask you, first, to again state the first time that you ever met Mr. von Opel. A. The first time I ever met Mr. von Opel was in Paris, in 1934.

Q. You are quite certain of that? A. Yes.

Q. How do you establish that date in your recollection?

A. It was the first time I ever met him.

Q. The second time that you ever met him was in 1935 in Nashville, Tennessee; is that correct? A. Yes, sir.

Q. Was that the occasion when Mr. von Opel came there in his Mercedes car? A. Yes.

Q. Let me see if I can refresh your recollection on that.

You saw that car, a yellow Mercedes, with red 1781 leather upholstery? A. It had red leather upholstery, yes, sir.

Q. Do you recall at the time you had that meeting with Mr. von Opel that he told you about participating in the Gordon Bennett balloon races in Chicago as a co-pilot?

A. No, sir, I do not.

Q. You don't recall that? A. No.

Q. Do you recall whether or not anyone was with him when he arrived in Nashville in that Mercedes car? A. Yes; Mr. Theodore Hoffacker.

Q. Would it refresh your recollection any if I told you that Mr. von Opel came from Europe in the summer of



1933, that he spent about 14 days in New York, and went to Chicago, where he participated in the Gordon Bennett balloon races, and that at that time he brought with him his Mercedes car; and that he then went to Miami, Florida, and then went to Shreveport, Louisiana, where he contacted Mr. Hoffacker, and that he then went to Nashville, Tennessee, and met you? A. No, that would not refresh my recollection; my recollection is as I stated.

Q. You are quite certain it was the summer of 1935? A. Yes, sir.

Q. There wasn't any other occasion than the one to which you have testified when Mr. von Opel came to visit you in the Mercedes car; is that correct? A. I don't know whether it is correct or not. That is the first time I recall.

Q. Wouldn't you remember if he came to visit you in a yellow Mercedes? A. I don't know whether it was yellow or not.

Q. Did he ever again at any time, to the best of your recollection, come to visit you in a Mercedes car? A. I don't recall; he may have done so.

Q. If the customs office shows that that car was brought here in 1933 and returned to Europe the same summer or sold in the United States, would you then agree that you were in error as to the first time you met Mr. von Opel? A. No.

Q. You would not agree, then? A. No.

Q. All right. Mr. Houghland, I want to ask you to think carefully before you answer this question. Take as much time as you want. But will you give me the names of all the individuals in Washington with whom you have discussed this case or with whom you have discussed the acquisition of the stock of the Spur Distributing Company? A. I couldn't do that.

Q. Give me whatever names you remember. A. Well, I discussed the acquisition of the stock with Mr. Leo Crowley, Alien Property Custodian; with a number of his assistants in the Alien Property office, includ-

ing Mr. Rubens; Mr. W. D. Bradford—he was not his assistant; he was Mr. Markham's assistant—with Senator McKellar; with Mr. Cordell Hull; with Mr. De Orsey. That is all I can recall.

Q. That is all you recall offhand? A. Offhand recall. I am sure there were many over in the Alien Property Custodian's office, but I don't offhand just recall them by name.

Q. How many times have you discussed the acquisition of the Spar stock with Senator McKellar? A. Twice.

Q. Will you tell the Court the nature of those discussions and when they were? A. I think that they were in the—I know that one of them was in 1944.

Q. Will you give us the approximate date in 1944? A. I don't recall the approximate date. They may have both been in 1944. It is possible that one of them was in 1943, but I wouldn't attempt to state.

Q. Will you tell us what those conversations were about? A. Yes, sir. I was attempting to get— You are talking about Senator McKellar, now?

1784 Q. Yes. A. I was attempting to get Senator McKellar to intercede in my behalf to get the Alien Property Custodian to sell the stock.

Q. Both of those discussions were about that? A. Yes, sir.

Q. What, if anything, did Senator McKellar do about that? A. He called Mr. Markham, Alien Property Custodian, on the telephone and talked to him.

Q. Did you employ Mr. De Orsey? A. Yes, sir.

Q. He is an attorney in Washington? A. Yes, sir.

Q. What was the purpose of his employment? A. The purpose of his employment was to keep me advised of what was going on in Washington. My own attorney was ill with a heart attack, and I had no legal representative of any kind.

Q. Was part of Mr. De Orsey's employment to call upon Mr. Connor? A. No, sir.

Q. It was not? A. No, sir.

Q. Did you know he had called upon Mr. Connor?  
1785 A. Yes, sir.

Q. He advised you of that fact? A. Yes, sir.

Q. That was in connection with your acquisition of the Spur stock? A. No, sir.

Q. It was not? A. No, sir.

Q. In what regard was it? A. I don't recall what it was; something to do with this impending trial, I think. I did not authorize Mr. De Orsey to call upon Mr. Connor, if that is the question.

Q. Those are the only people you recall, offhand, speaking to in Washington; is that correct? A. Yes, sir.

Q. Will you state at this time to the Court the financial interest which you have in the outcome of this case? A. Well, that would be a very difficult thing to state, but I can state the direct financial interest I would have.

Q. State that in any way you want. A. All right. I am employed by the Spur Company as its president and general manager and have a salary of \$18,000 a year from that source. I do not now actually have profit participation, but I have had in the past, and I am sure, if Mr. von Opel were to win this case, that I would no  
1786 longer be employed in that capacity.

Q. Do you have any other interest in the outcome of the case? A. I am a stockholder in the company, and I— Do you wish me to express my opinion about the stock?

Q. I would like you to express how much stock you own.  
A. I own 28,000 shares.

Q. Percentagewise, what percentage is that of the total shares of the company? A. I can ask you to figure it, if you don't mind. There are 139,000 shares outstanding.

Q. You own 28,000 of that. About 12 per cent, roughly. Now, will you state to the Court whether you have appeared here voluntarily as a witness for the Government or whether you have been subpoenaed? A. I appeared voluntarily.



Q. Are you acquainted with Mr. H. D. Hines? A. Yes, sir.

Q. Will you state to the Court, please, who he is? A. Mr. H. D. Hines is vice president of Spur Distributing Company.

Q. Is he related to you? A. We married sisters.

Q. How long has Mr. Hines been with the Spur Company? A. Since the Spur Company was four months old.

1787 Q. Is he also a stockholder? A. Yes, sir.

Q. Do you know the extent of his participation? A. Not accurately, but generally speaking.

Q. Approximately what is it? A. About 7,000 shares, I think. I may be wrong in that; maybe a little more than that.

Q. Are you familiar with the compensation which Mr. Hines receives? A. Yes, sir.

Q. Will you tell the Court, please, what that is? A. Twelve thousand dollars a year.

Q. Does he have a bonus arrangement, or did he have a bonus arrangement, prior to the time the Custodian seized this property? A. No, sir.

Q. So all he ever received was the \$12,000? A. Except that bonuses to employees, other than to myself, he has been included in.

Q. Did you forbid Mr. Hines' appearance here? A. No, sir.

Q. Did you discuss with him his appearance? A. Yes, sir.

Q. Will you tell us the nature of that discussion, please? A. Well, it was very brief. I told him to go down and see the lawyer, consult with him, and have him advise him on the matter; that I didn't know.

Q. You didn't know what? A. I didn't know whether he should appear or should not appear—what the circumstances were. As far as the subpoena was concerned, I assumed he had to appear.

Q. You told him to go and see what lawyers? A. To see—

Mr. Burling: May the record show, if the Court please, that the subpoena under discussion was a totally void subpoena?

Mr. Ingoldsby: We make no point of that.

Mr. Burling: We said it was totally void and that a simple reading of the Rules of Civil Procedure would have told you so.

Mr. Ingoldsby: We knew that when it was sent.

Mr. Burling: Thank you.

By Mr. Ingoldsby:

Q. Is that all the conversation you had with Mr. Hines about his appearance here? A. No. He came back from the lawyer's office and told me that he was not required to appear; that the lawyers said there was a rule that a witness living 100 miles from the District of Columbia  
1789 could have his deposition taken instead of appearing.

Q. What did you do? A. I don't recall what I said; I probably said, "That's fine."

Q. So you didn't tell him not to come? A. No, I didn't tell him not to come at all.

Q. Did you have any conversations with any representatives of the Government concerning this subpoena? A. No, sir.

Q. You did not? A. No, sir.

Q. Mr. Houghland, you were one of the founders of the Spur Company, were you not? A. I was the founder, yes, sir.

Q. Who else was with you in that business at the time that the company was founded? A. Very early in it there was a man by the name of Joseph E. Thomas.

Q. Anyone else? A. No, sir.

Q. Were there just the two of you? A. Yes, sir.

Q. How much capital was invested in this business originally? A. At the very beginning, \$15,000.

1790 Q. How much was invested in the company at the time that Mr. von Opel first became a stockholder?

A. I can't be absolutely sure of that without checking it, but I will be glad to tell you, approximately, what I think.

Q. Approximately. A. I think it was probably three hundred or three hundred fifty thousand dollars.

Q. How much stock did you own in this company at the time Mr. von Opel purchased into the company? A. I don't recall.

Q. Can you recall approximately? A. No; I don't believe I can.

Q. Didn't you own in the neighborhood of fourteen to sixteen thousand shares in 1931? A. I can't honestly answer that question, but that would be a fair kind of guess, if I were guessing at it.

Q. That would be a fair estimate, you think? A. Yes, I think so.

Q. Were those shares paid for in 1931? A. No, sir.

Q. What was the arrangement between you and the company with respect to those shares? A. I owed \$30,000 on the shares, and I had a time period to pay them off in.

1791 Q. What collateral was given for the payment?

A. The shares.

Q. The shares were pledged with the company; is that correct? A. Yes, that is correct.

Q. Did Mr. von Opel disturb this arrangement when he came with the company? A. No, sir.

Q. Over the period of years, did you ultimately pay off those shares? A. Yes, sir.

Q. In addition, you acquired some few thousand additional shares; is that correct; since 1931 or 1932? A. Yes, quite a few.

Q. I believe you testified on direct examination that you received an employment contract when Mr. von Opel purchased into this company; is that correct? A. Yes, sir.

Q. Will you explain briefly how you happened to obtain that contract and what the contract was all about? A.



Well, there was a rather unhappy period of adjustment between Mr. Hoffacker and myself, and we carried on negotiations for almost a year, in which I, in order to protect myself from being badly handled, I thought, was working to try to raise money to exercise my options 1792 and return—that is, with my group—to the controlling position in the company.

Q. Then what happened? A. In the course of those negotiations, why, we compromised on my having an employment contract and a call on their stock in case they sold.

Q. That was a contract for how long a period of time?

A. It was for eight years but retroactive through 1933, so it was really, I think, only seven years ahead of that date.

Q. Did that contract contain any provision regarding your engaging in any business in competition with Spur?

A. Yes, sir.

Q. What did it say about that? A. It said that I would not engage in any business or in competition with Spur.

Q. Would you say that you resented Mr. von Opel's purchase into the Spur Company? A. Yes, sir.

Q. In 1932? A. I resented the purchase. I didn't know Mr. von Opel, but I resented the purchase and the method of it.

Q. Would you say that you have ever gotten over that resentment? A. No, I don't think I have.

1793 Q. What income were you receiving from Spur just prior to the time you entered into this contract?

A. Eighteen thousand dollars, the same that I receive now.

Q. Under the seven-year contract which you had with Mr. von Opel, did you receive merely \$18,000 under that contract? A. I received this payment for waiving the right to exercise my options on additional stock. I received a management contract with a profit participation in it.

Q. What was the extent of your participation in profits under this contract? A. It was 5 per cent of net earnings after 12-1/2 per cent had been earned for stockholders on capital and surplus.

Q. What is the largest amount that you ever received in any one year under this contract? A. Thirty-eight thousand dollars.

Q. When did that contract terminate? A. January 1.

Q. Of what year? A. This year—of 1949—or December 31, 1948; I don't recall which.

Q. Didn't you receive two contracts? A. Yes. I just told you I did.

Q. When you said that the largest amount you 1794 ever received under the contract was— A. Was under the management contract, which I understood you to ask me about.

Q. My question is, Was there one management contract or two management contracts? A. There was one management contract.

Q. And that ran from 1933 to when? A. To January 1, 1949. That was a renewal in 1940.

Q. Then, that same contract was renewed? A. Yes.

Q. That only operated for how long—two years?—before the Government took over? A. Well, it was renewed in 1940, and the Government took over in 1942. Yes; two years approximately.

Q. Did they discontinue the contract? A. No, sir.

Q. You are still entitled to participate in profits if earned, then? A. I was paid until termination of the contract.

Q. I believe that your son testified the other day that he was the owner of the Direct Oil Company; is that correct? A. Yes, sir.

Q. Are you able to tell us, please, who was the owner of the Economy Oil Company? A. I am not absolutely sure, but I think the Economy Oil Company—I am 1795 not absolutely sure about the name, but I imagine I know what you are inquiring about—I think the

Economy Oil Company was a group of four or five small stations owned by Mr. Henry Hines after—

Q. That is the same Henry Hines who was with your company? A. That is right.

Q. Is that company still in business? A. I believe it has one filling station at Russellville, Kentucky.

Q. That is all they operate at the present time? A. Yes.

Q. How many stations does your son operate? A. I believe he operates fifteen.

Q. They are located in five southern states; is that correct? A. I believe it is.

Q. The last year that the company operated prior to the time when the Custodian took over the interest of Mr. von Opel was 1941; is that correct?

Mr. Burling: Will you state what company you are talking about?

By Mr. Ingoldsby:

Q. I should clarify that. The Spur Company. A. Yes; they took it over in 1942.

1796 Q. So the last year of operation was 1941; is that correct? That was the last year of operation prior to the time the Government took over? A. I believe it was, yes.

Q. Will you tell the Court what Spur earned in that year? A. In 1941?

Q. In 1941. A. As I recall—I couldn't tell you exactly, but I can tell you very closely—I think it earned approximately four hundred seventy some thousand dollars net.

Q. That is how much per share? A. I think it is close to \$3.50.

Q. Will you describe for the Court what the capital stock, what the capital structure of the company was at the time the Custodian took over the interests of Mr. von Opel? A. It had 400,000 shares of stock, of which 139,000 were issued.



Q. That is the entire structure? A. Yes, sir.

Q. Will you describe also the arrangement on the board of directors of the Spur Company at that time? A. In 1941.

Q. Yes. A. You mean after the Government took over or before?

1797 Q. immediately before—on January 1, 1942, say.

A. I couldn't be quite sure of the date about it, but if you will ask the question perhaps a little differently I could give you the information you want. I mean I couldn't be quite sure as to who were on the directorate in 1941 and who were changed on the directorate in 1942.

Q. Well, go ahead and give the explanation you want to give. A. But I know who were on the directorate definitely in April, 1942, and I believe that is the information you may want.

Q. Well, who was there in April, 1942? A. Well, in April, 1942, there was myself, Mr. Henry Hines, Mr. Cecil Sims, Mr. Paul M. Davis, and I believe Mr. W. D. Bradford representing the Government. I won't trust that to be accurate.

Q. That is April, 1942? A. I imagine that is it; I couldn't be absolutely sure.

Q. Are you quite certain that Mr. Bradford was on the board of directors at that time? A. No, I am not. I am not that certain.

Q. You don't have any independent recollection of when he came to your board of directors? A. I can't right certain about it. I don't believe he was. I believe somebody else was, but I couldn't recall. Somebody from the 1798 Alien Property/Custodian's office.

Q. Do you recall when Fritz von Opel was interned? A. No, I can't recall.

Q. Would it refresh your recollection if I told you that it was February, 1942? A. No, I just don't know when he was interned.

Q. Do you recall that it was in the early part of 1942?

A. No, I don't. I recall that he was interned some time in that general period after war was declared, but I can't recall the date. I don't know that I ever knew it.

Q. Would you say that it was a matter of no interest?

A. No, it was a matter of interest to me.

Q. I beg your pardon? A. I say no, it was a matter of interest to me.

Q. But you never found out or made any particular effort to find out when he was interned? A. The date, no.

Q. Is it a fact that prior to Mr. von Opel's internment your board of directors was composed of yourself and Mr. von Opel and a man named Ulrich and Mr. Thomas? A. Yes, that is right.

Q. How long did that situation exist? A. Mr. Ulrich was removed when the Custodian took over.

Q. My question is this: How long prior to January 1, 1942 had that situation been in existence? A. That 1939 board of directors?

Q. Yes. A. I can't recall. I don't recall Mr. von Opel ever having been on the board of directors prior to that time. I remember he was on the board of directors at one time, but I don't recall his ever having been prior to that time.

Q. Well, you know that Mr. von Opel could not have been on the board of directors after January 1, 1942? A. That is right. Before the time, you mean? I don't recall his having been a director but one time. I don't, frankly, know just what the time was.

Q. Would you say that Mr. von Opel was not a member of the board of directors in 1941? A. I wouldn't say, because I just don't recall. The directors had a lot of shifts and changes in them through the years. I don't recall.

Q. During the period from, say, 1938 through 1941 you had only four members of the board, didn't you? A. I don't recall, now. We were supposed to have five, I think.

Q. Didn't you pass a resolution some time in 1936 which authorized five members, but by agreement there were only four members: you and Mr. Thomas, who was, let us say, friendly to you, and Mr. von Opel and Mr. Ulrich, who was friendly to Mr. von Opel? A. I don't recall 1800 that.

Q. You don't recall that? A. No.

Q. Would you say that that was not the case? A. No, I would not.

Mr. Ingoldsby: What is our next number, Mr. Clerk?

The Deputy Clerk: Number 163 coming up.

Mr. Ingoldsby: Will you mark this as 163 and this letter as 164?

(Letter of October 25, 1943, from Spur Distributing Company to Alien Property Custodian, was marked as Plaintiff's Exhibit 163 for identification.)

(Copy of letter of May 31, 1943, from S. J. Crowley to J. Mason Houghland, was marked as Plaintiff's Exhibit 164 for identification.)

Mr. Ingoldsby: Plaintiff's Exhibits 163 and 164, I wish to state for the record, come from the Department of Justice files and were provided us by the Department. I might say that the same thing applies to all other documents which I shall offer until further notice.

I offer Plaintiff's Exhibits 163 and 164.

Mr. Burling: May I see them? I do not doubt you, but I just have not seen them.

(Mr. Ingoldsby handed papers to Mr. Burling.)

By Mr. Ingoldsby:

1801 Q. Mr. Houghland, before I show you these two exhibits, I want to ask you, What was the financial